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T R E A T I S E
O F T H E
P L E A S O F T H E C R O W N ;

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P R I N C I P A L M A T T E R S R E L A T I N G T O T H A T S U B J E C T,
D I G E S T E D U N D E R P R O P E R H E A D S.

By WILLIAM HAWKINS,
SERJEANT AT LAW.

T H E S E V E N T H E D I T I O N :
In which the Text is carefully collated with the original Work; the marginal References corrected; new References from the modern Reporters added; a Variety of *Manuscript Cases* inserted; and the whole enlarged by an Incorporation of the several Statutes upon Subjects of Criminal Law, to the THIRTY-FIFTH YEAR OF GEORGE THE THIRD. To which an Explanatory Preface is prefixed, and new and copious Indexes are subjoined.

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V O L. II.

L O N D O N :
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1795.

AN
ANALYSIS
OF
THE SECOND VOLUME
OF THE
PLEAS OF THE CROWN.

OFFENCES more immediately against the subject, not capital, are of two kinds :

1. Misprision of felony, c. 59.
2. Other inferior offences.

Such inferior offences are of two kinds :

1. Such as amount to an actual disturbance of the peace.
2. Such as do not amount to such a disturbance.

For the prevention of the former of these kinds of offences, the law has provided two remedies :

1. By surety for keeping the peace, c. 60.
2. By surety for the good behaviour, c. 61.

Of the abovementioned offences amounting to the actual disturbance of the peace, there are two kinds :

1. Such as may be committed by one or two persons.
2. Such as require a greater number.

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Of those which may be committed by one or two persons, there are four kinds :

1. Assaults, c. 62. f. 1.
2. Batteries, c. 62. f. 2.
3. Affrays, c. 63.
4. forcible entries and detainers, c. 64.

Of those which require a greater number of persons there are three kinds :

1. Riots, c. 65. f. 1.
2. Rout, c. 65. f. 8.
3. Unlawful assemblies, c. 65. f. 9.

Of such inferior offences not amounting to an actual disturbance of the peace, there are two kinds :

1. Such as are committed by officers.
2. Such as are committed by common persons, without any relation to an office.

Of offences of this nature, committed by officers, there are three species :

1. Neglect, or breach of duty, c. 66.
2. Bribery,

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2. Bribery, c. 67.
3. Extortion, c. 68.

Of offences of this nature, committed by private persons, without any relation to any office, there are two kinds :

1. Such as are infamous and grossly scandalous, proceeding from principles of downright dishonesty, malice, or faction.
2. Such as are of an inferior nature, and neither infamous nor grossly scandalous.

Of offences of the first sort, there are seven species :

1. Perjury, c. 69.
2. Forgery, c. 70.
3. Cheats, c. 71.
4. Conspiracy, c. 72.
5. Libels, c. 73.
6. Keeping of a bawdy-house, c. 74.
7. Or other unlawful place, c. 74.

Of offences of the latter sort, there are two kinds :

1. Such as more immediately affect the public.
2. Such as more immediately affect the interests of particular persons.

Of those which more immediately affect the public, there are four kinds :

1. Common nuisances, c. 75.
2. Monopolies, c. 79.
3. Forestalling, engrossing, and regrating, c. 80.
4. Barratry, c. 81.

The most remarkable kinds of common nuisances are,

1. Such as relate to highways and turnpike roads.
2. Such as relate to public-houses, c. 78.

Those which relate to highways come under a twofold consideration :

1. As they relate to highways and turnpike roads in general, c. 76.
2. As they relate to bridges in particular, c. 77.

Of the offences above-mentioned more immediately affecting the interests of particular persons there are three kinds :

1. Usury, c. 82.
2. Maintenance.
3. Buying or selling a pretended title, c. 86.

Maintenance is two-fold :

1. *Rumalis*, c. 63. f. 2.
2. *Curialis*, c. 82. f. 3.

Of maintenance *curialis* there are three species :

1. General maintenance, c. 83. f. 4.
2. Champerty, c. 84.
3. Embracery, c. 85.

And to the above offences are now added the laws respecting,

1. Seducing artificers, c. 87.
2. The offence of exporting tools, c. 88.
3. Embezzling naval stores, c. 89.
4. Exercising trade without serving an apprenticeship, c. 90.
5. Dog-stealing, c. 91.
6. Gaming, c. 92.
7. Strolling-players, c. 93.
8. And vagrants, c. 94.

T R E A T I S E

OF



THE PLEAS OF THE CROWN,

BOOK THE FIRST.

CHAPTER THE FIFTY-NINTH.

OF MISPRISON OF FELONY.

OFFENCES more immediately against the subject, not capital, are either *misprison of felony*, or other inferior offences. 3. Inst. 36. 1. Hale 374. 375. 652. 708.

Seft. 1. It is said, that every *felony* includes *misprison of felony*, and may be proceeded against as a *misprison* only. If the king please, as hath been shewn already in chapter twenty. 1. B. Treaf 25. 2. Fich. 3. 10. S. P. C. 32.

Seft. 2. But generally *misprison of felony* is taken for a Summary concealment of felony (1), or a procuring of the concealment thereof, whether it be felony by the common law, or by statute. 129. S. P. C. 37. c. 3. Inst. 139.

(1) Silently to observe the commission of a felony, without using any endeavours to apprehend the offender, is a *misprison*. 1. Hale 421. 448. 533. 2. Hale 75. 2. Hawk. c. 12. For a man is bound to discover the crime of another, to a magistrate, with all possible expedition. 3. Inst. 143. So also the concealment of *treasure trove* is *misprison of felony*. 4. Comm. 121. 3. Inst. 133.

Seft. 3. For this offence every common person is punishable by fine and imprisonment at common law. And by the statute of *Westminster* 3. Edw. 1. c. 9. "If the sheriff, coroner, or any other bailiff within a franchise, or without, for reward, or for prayer, or for fear, or for any manner of affinity, conceal, consent, or procure to conceal the felonies done in their liberties or otherwise will not attach nor arrest such felons (there as they may), or otherwise will not do their office, for favour borne to

“such misdoers, and be attainted thereof, they shall have
“one year’s imprisonment, and after make a grievous fine
“at the king’s pleasure, if they have wherewith; and if
“they have not whereof, they shall have imprisonment of
“three years.”

Stat. 4. By 3. Hen. 7. c. 1. “The justices of the
“peace of every shire of this realm, for the time being,
“may take by their discretion an inquest, whereof every
“man shall have lands and tenements to the yearly value of
“forty shillings, at the least, to enquire of the conceal-
“ments of other inquests taken before them, and afore
“other, of such matters and offences as are to be enquired
“and presented afore justices of the peace, whereof com-
“plaint shall be made by bill, or by bills, as well within
“franchise as without. And if any such concealment be
“found of any inquest, as is afore rehearsed, had or made
“within the year after the same concealment, every person
“of the same inquest to be amerced for the concealment,
“by discretion of the same justices of the peace; the said
“amerciaments to be seised in plain sessions.”

1. Hale 619.
2. P. C. 40.
3. Inst. 134.
Summary 130.

Stat. 5. To this title of *misprision of felony*, that of *theft-
bote* seems not improperly reducible, which is where one
not only knows of a felony, but takes his goods again, or
other amends, not to prosecute.

F. Cor. 353.
1. Hale 400.
2. And. 47.
Cro. Eliz. 486.
536. B. 2. c. 29.
1. 26, &c.

Stat. 6. This offence is very nearly allied to felony, and
is said to have been anciently punished as such. But at this
day it is punishable only with ransom and imprisonment,
unless it were accompanied with some degree of mainte-
nance given to the felon, which makes the party an access-
sary after the fact.

B. Cor. 122. 42.
Aff. Sum. 170.
1. R. Abr. 67.
F. Aff. 346.

Stat. 7. But the bare taking of one’s own goods again
which have been stolen, is no offence at all, unless some
favour be shewn to the thief (2).

(2) To take any reward for helping any person to stolen goods, is made felony by
4. Geo. 1. c. 11. And to advertise a reward for the return of things stolen, incurs a
forfeiture of fifty pounds, by 25. Geo. 2. c. 36. for which vide ante, Appendix the
eighth.

CHAPTER THE SIXTIETH.

OF SURETY OF THE PEACE.

INFERIOR offences more immediately against the subject not capital, either amount to an actual disturbance of the peace, or do not.

AND FIRST I shall consider such offences of this kind, as amount to an actual disturbance of the peace.

But before I descend to the several kinds thereof, it may Dalt. c. 116. not be improper first to shew what *security* may be had 4. Comm. 248. against the breach of the peace, before it happens.

And in order hereto, I shall examine how the breach may be secured.

FIRST, By surety for keeping the peace.

SECONDLY, By surety for the good behaviour.

As to SURETY for *keeping the peace*, I shall consider the following particulars:

1. In what cases it ought to be taken *ex officio*.
2. At whose request it ought to be granted.
3. Against whom it ought to be granted.
4. For what cause it is grantable.
5. In what manner it is grantable by the courts of chancery and king's bench.
6. In what manner it is grantable by a justice of peace.
7. In what manner the process for it ought to be executed.
8. How such process may be superseded.
9. What ought to be the form of a recognizance for this purpose.
10. How such a recognizance may be discharged.
11. How such a recognizance ought to be certified and proceeded upon.
12. How it may be forfeited.

OF SURETY OF THE PEACE. Bk. I.

AS TO THE FIRST POINT, *viz.* In what cases surety of the peace ought to be taken *ex officio*.

Dalb. c. 67. 158. Sect. 1. It seems, that any justice of peace may, according to his discretion, bind all those to the peace who in his presence shall make any affray, or shall threaten to kill or beat any person, or shall contend together with hot words, or shall go about with unusual weapons or attendants, to the terror of the people.
Lamb. 77. 78. 9. Ed. 4. 3. B. Peace, 7. 8. Cromp. 135. 142. 21. E. 4. 40. Foster 135.

And also all such persons as shall be known by him to be common barrators :

And also all those who shall be brought before him by a constable for a breach of the peace in the presence of such constable :

And all such persons who, having been before bound to keep the peace, shall be convicted of having forfeited their recognizance (1).

(1) Conservators of the peace also may grant surety according to their discretion.
4. Burr. 250. And this seems to have been the principal duty of a conservator.
11. St. Tr. 3167. A secretary of state, therefore, nor a privy councillor, ever bind to the peace or the good behaviour, for they are not, as such, conservators of the peace.
LORD HOLT indeed, in the case of *Kendal, Rex*, and others, so considered them; but *LORD CAMPDEN* affirms, that no treatise, case, record, or statute, has ever called them conservators of the peace from the beginning of time down to that decision.
11. St. Tr. 317.

AS TO THE SECOND POINT, *viz.* At whose request the surety of the peace ought to be granted.

Dalb. c. 68. Sect. 2. It seems agreed at this day, that all persons whatsoever under the king's protection, being of sane memory, whether they be natural and good subjects, or aliens, or attainted of treason, &c. have a right to demand surety of the peace.
Lamb. 78. 79. Crom. 133. 134.

Dalb. c. 68. Sect. 3. But it has been questioned, whether *Jews* or *Pagans*, or persons attainted of *præmunie*, have a right to it or not.
Leach 80. 4. C. 111. 250.

Register 86. Sect. 4. However it is certain, that a wife may demand it against her husband threatening to beat her outrageously, and that a husband also may have it against his wife (2).
3. B. 1. 433. 1. Id. Hard. Case, 74. Strange 1207. Dalb. c. 68. Lamb. 78. Crom. 133. 3. Lev. 118. F. N. B. 80. Rex v. A. R. Bower, 1. Term Rep. 696. Rex v. Earl Ferrers, 1. Burr. 635.

(2) And if the marriage be disputed, the Court will order the recognizance to be worded so as not to admit the fact. *Ser. 1231.*

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As to THE THIRD POINT, *viz.* Against whom the surety of the peace ought to be granted.

Sec. 5. There seems to be no doubt but that it ought, upon a just cause of complaint, to be granted by any justice of peace against any person whatsoever, under the degree of nobility, being of sane memory, whether he be a magistrate or private person, and whether he be of full age, or under age, &c. But *infants* and *femes covert* ought to find security by their friends, and not to be bound themselves; and the safest way of proceeding against a *peer* is by complaint to the Court of chancery or king's bench (3).

Dalt. c. 68.
Lamb. 81. 8.
Cromp. 134.
3. Keb. 433.
2. Lev. 128.
See the book
above cited,
and Fitz. Sul-
pœna 20.

(3) It is said, the fear of one cannot be the fear of another, and therefore every recognizance must be separate, Pult. 18. But in *Mick. 23. Geo. 2. B. R.* the Court allowed three women to file joint articles of the peace against three men. *The King v. Nettle, &c.* MSS. See also 4. Com. Dig. "Justices of Peace," (B. 5.)

As to THE FOURTH POINT, *viz.* For what cause the surety of the peace is grantable.

Sec. 6. It seems clear, that wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt, as by killing, or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person, and that every justice of peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear; and that he has just cause to be so, by reason of the other's having threatened to beat him, or lain in wait for that purpose; and that he does not require it out of malice, or for vexation.

Dalt. c. 67.
Lamb. 82.
Cromp. 135.
1. Lev. 107.
2. Lev. 228.
F. N. B. 801
Reg. 88.
Moor 874.
Godh. 215.
1. Keb. 290.

Sec. 7. It seems also the better opinion, that he who is threatened to be imprisoned by another, has a right to demand the surety of the peace; for every unlawful imprisonment is an assault and wrong to the person of a man: and the objection, that one wrongfully imprisoned may recover damages in an action, &c. and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt, but that one threatened to be beaten may demand the surety of the peace (4).

Dalt. c. 67.
Lamb. 82, 8.
Com.
17. E. 4. pl. 2
2. Peace 22.
Cromp. 134.

(4) And although the fact from which the fear arises be pardoned, the Court will receive it as a ground to grant the security upon. *Str. 473.*

OF SURETY OF THE PEACE. Bk. I.

As to THE FIFTH POINT, *viz.* In what manner such surety is grantable by the courts of chancery and king's bench.

See 1. Lev. 53.
1. Sid. 67.
Skin. 61.
Mullineux's
case, Comb.
427.

Sett. 8. It is enacted by 21. Jac. 1. c. 8. "That all process for the peace or good behaviour to be granted or awarded out of the same courts, or either of them, against any person or persons whatsoever, at the suit of, or by the prosecution of any person or persons whatsoever, shall be void and of none effect, unless such process shall be so granted or awarded, upon motion first made before the judge or judges of the same courts respectively (sitting in open court, and upon declaration in writing upon their corporal oaths, to be then exhibited unto them, by the parties which shall desire such process), of the causes for which such process shall be granted or awarded by or out of the said courts respectively, and unless that such motion and declaration be mentioned to be made upon the back of a writ; the said writings there to be entered and remain of record; and that if it shall afterwards appear unto the said courts, or either of them respectively, that the causes expressed in such writings, or any of them, be untrue, that then the judge or judges of the said courts, or either of them respectively, shall and may award such costs and damages upon the parties grieved, for their, or any of their wrongful vexations in that behalf, as they shall think fit; and that the party or parties so offending shall and may be committed to prison by such judge or judges, until he or they pay the said costs and damages (5).

(5) A peer or peers cannot be bound over in any other place than the courts of king's bench, or chancery. 4. Comm. 251. A peeress may demand surety against her lord, as in the cases of the Marquis of Carmarthen. Foster 359. Lord Vane, Str. 1202. Earl of Stamford, Hardw. Cases 74. Earl Ferrers, Burr. 631, 723. Lady Strathmore, East. 25. Geo. 3. 1. Term Rep. 696. Lord Howard, 11. Mod. 109. 3. Burr. 1922. The articles also must be verified by the *oath* of the exhibitor; an *affirmation* therefore is not sufficient. Str. 527. 12. Mod. 243. Nor will the Court permit the truth of the allegations to be controverted by the defendant, but will order security to be taken immediately, if no objections arise upon the face of the articles themselves. Str. 1222. But if on an application for the assistance of the Court to enforce the subsequent process, the articles should manifestly appear, from the corroborated affidavit of the defendant, to have been a *malicious, voluntary, and gross perjury*, the Court will resist the application, and commit the offender. 2. Burr. 806. 3. Burr. 1922. Nor will the Court receive articles of the peace, if the parties live at a distance in the country, unless they have previously made application to a justice in the neighbourhood. 2. Burr. 780. And if the Court do receive them, the secondary may indorse the attachment, in the sum required, and order a justice of the country to take the security. 2. Burr. 1039. 1. Black. 233. Or, if very particular circumstances attend the case, the Court will compel the justices by *mandamus*. Strange 835. But that this is a singular instance, vide Sayer 253.

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As to THE SIXTH POINT, *viz.* In what manner such surety is grantable by a justice of peace.

Secd. 9. It seemeth certain, that if the person to be bound be in the presence of the justice, he may be immediately committed, unless he offer sureties; and from hence it follows, *a fortiori*, that he may be commanded by word of mouth to find sureties, and committed for his disobedience; but it is said, that if he be absent, he cannot be committed without a warrant from some justice of peace, in order to find sureties, and that such warrant ought to be under seal, and to shew the cause for which it is granted, and at whose suit; and that it may be directed to any indifferent person (6).

(6) A justice cannot enjoin another to keep the peace under a penalty. 3. Com. Dig. 370. Nor commit for not finding security, until the party has been required, and has refused to do. Per Pratt, King v. Wilks, E. 3. Geo. 3.

As to THE SEVENTH POINT, *viz.* In what manner the process for the peace ought to be executed.

Secd. 10. It seems needless to give a particular account of the execution of the writ of *supplicavit*, because I do not find that it is much in use at this day, and therefore I shall refer the reader for this purpose to *Fitzherbert's Natura Bre-vium*, fol. 80, &c. (7)

1. Sid. 67.

(7) If there be no proceedings on a *supplicavit* within a year, the recognizance is, of course, discharged; and if the party be committed after the expiration of that time, he shall be discharged upon very slight security. Fitzg. 268. If taken below, and the party appear pursuant to the condition, no indictment being lodged, he must be discharged. Hard. Ca. But the Court in discretion may refuse to discharge a recognizance, even though the exhibitant appear and consent; for a breach against any other person is equally a forfeiture. 11. Mod. 129.

But as to the execution of a warrant of a justice of the peace, the following rules are to be observed.

Secd. 11. FIRST, It can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the sheriff, who may, either by parole, or by precept in writing, authorize an officer sworn and known, to serve it, but cannot empower any other person without a precept in writing.

Secd. 12. SECONDLY, If the warrant be made in the common form, directing the officer to cause the party complained of to come before some justice of the peace to find sufficient sureties, &c. and if he shall refuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, &c. the officer who serves it, before he makes any arrest, must first

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to do either, he may carry him to the gaol by force of the same warrant without more.

Dalt. c. 69.
Brook False
Imprison-
ment 11.
21. H. 7. 21.
Lamb. 94, 95.

SECT. 13. THIRDLY, If the warrant specially direct, that the party shall be brought before the justice who made it, the officer ought not to carry him before any other. But if the warrant be general, to bring him before any justice of peace, &c. the officer has the election to bring him before what justice he pleases, and may carry him to prison for refusing to find surety before such justice.

AS TO THE EIGHTH POINT, *viz.* How such process may be superseded.

Dalt. c. 69.

SECT. 14. It is said, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the peace of the same county, either before or after a warrant is issued against him, he may have a *superseas* from such justice, which shall discharge him from arrest from any other justice, at the suit of the same party, for whose security he has given such surety. Also it is said, that an appearance upon a recognizance for the peace may be superseded, by finding sureties in the chancery or king's bench, and purchasing a writ testifying the same. But this practice having often been abused by turbulent persons, who deservedly fearing to be bound to the peace or good behaviour, by justices of peace, would procure themselves to be bound thereto in the said courts, upon insufficient sureties, or upon the colourable prosecution of some person who would be ready at all times to release them at their pleasure, whereupon writs of *superseas* had been often directed to justices of peace, commanding them to forbear to arrest the parties for such causes, by reason whereof such turbulent persons used to misdemean themselves among their neighbours with impunity, as it is recited by 21. Jac. 1. c. 8. It is thereupon enacted by the said statute, "That all writs of *superseas* to be granted out of either of the said courts, shall be void, unless such process be granted upon motion in open court first made, &c. upon such sufficient sureties, as shall appear unto the judge or judges of the same court respectively, upon oath, to be assessed at five pounds land, or ten pounds in goods, in the subsidy book, at the least; which oaths, and the names of such sureties, with the places of their abode, and where they stand so assessed in the subsidy books, shall be entered, and remain of record in the same courts; and unless it shall also first appear unto the said judge or judges, from whom such *superseas* is desired, that the process of the peace, or good behaviour, is procured

Lamb. 112,
113.
See 2. R. Abr.
492.

2. Chan. Rep.
68.

Vide ante, c. 8.
2. Burr. 806.

"sequestered

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to require the party to go with him, and find sureties according to the purport of the warrant, but upon his refusal "secuted against him or them, desiring such *superfedeas* " *bona fide*, by some party grieved, in that court, out of " which such *superfedeas* is desired to be so awarded and " directed."

As to THE NINTH POINT, *viz.* What ought to be the form of such a recognizance.

Sec. 15. If it be taken in pursuance of a writ of *supplicavit*, it must be wholly governed by the directions of such writ; but if it be taken before a justice of peace, upon a complaint below, it seems that it may be regulated by the discretion of such justice, both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time, for which the party shall be bound. And it hath been said, that a recognizance to keep the peace as to *A. B.* for a year, or for life, or without expressing any certain time (*a*) (in which case it shall be intended to be for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the king's people in general, is good. (a) The court of king's bench, on articles of the peace being exhibited, have power to require bail for such length of time as they shall think necessary for the preservation of the peace. *Rex v. Bowes*, 1. Term Rep. 696.

Lamb. 103, 101.

Dalt. c. 73.

Sec. 16. However, it seems to be the safest way to bind the party to appear at the next sessions of the peace, and in the mean time to keep the peace as to the king, and all his liege people, especially as to the party, according to the common form of precedents.

3. Com. Dig. 371.
Lamb. 105.
Dalt. c. 124.

As to THE TENTH POINT, *viz.* How such a recognizance may be discharged.

Sec. 17. It seems agreed, that it may be discharged by the demise of the (*b*) king in whose reign it was taken, or of the (*c*) principal party who was bound thereby, if it were not forfeited before. Also it hath been holden, that it may be discharged by the (*d*) release of the party at whose complaint it was taken, being certified together with it. But this may justly be questioned, because the recognizance is not to the subject, but to the king, and consequently cannot be discharged by the subject, who is not a party to it. However, such a release will be a good inducement to the court, to which such a recognizance shall be certified, to discharge it, and so also will the non-appearance of the party at whose complaint it was taken, in order to pray the continuance of it. And yet it is said, that the sessions in

(b) B. Peace 15. 17.
1. H. 7. 2. 10.
(c) 15. H. 7. 2. 13.
21. Ed. 4. 70.
Dalt. c. 71.
1. Lev. 235.
(d) Lamb. 110.
&c.
Crom. 139.
169. 144.
11. H. 7. 12.
11. H. 4. 43.
B. 2. c. 36. f. 1.
64. c. 37. f. 34.
2. Vent. 131.
Savil 53.

1. Lev. 235. C. Jac. 282. Yelv. 207. 12. Mod. 251. Str. 235. 2. T. Will. 202.
1. Burr. 703. 3. Burr. 1922.

that

that case may, in their discretion, refuse to discharge it. However, it is certain that such a recognizance cannot be pardoned, or released by the king, before it is broken, because the subject has a kind of interest in it. And it is said, that the sureties are not discharged by their death, but that their executors, &c. continue bound as their testators, &c. were.

As to THE ELEVENTH POINT, viz. How such a recognizance ought to be certified and proceeded upon.

1. Amb. 111.
112. &c.
Dalt. c. 70.
Hil. 1. Geo. 1.
K. v. Combs
agreed.

Sett. 18. If it be taken by force of a writ of *supplicavit*, it needs not be certified till the justice receive a writ of *certiorari* to that purpose; but if it be taken upon a complaint below, it must be certified, sent, or brought to the next session of the peace by force of 3. Hen. 7. c. 1. that the party so bound may be called; and by the same statute, "If the party then make default, the same default shall be recorded, and the same recognizance with the record of the default, shall be certified into the chancery, king's bench, or exchequer." However, if the party have any excuse for his not appearing, it seems that the sessions is not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse. And it is said, that the sessions cannot in any case proceed against the party for a forfeiture of his recognizance, either in respect of his not appearing or breaking the peace; but that the recognizance in such case ought to be removed into some of the king's courts of WESTMINSTER-HALL, who shall proceed by *seire facias* upon such recognizance, and not by indictment, &c.

Sayer 253.
Dalt. c. 71.
Raym. 169.
196.
C. Jac. 598.
1. R. A. 900.
Parker 54.

3. Bulst. 120.
Whether such
seire facias
must shew the
day on which
the sessions
Car. 133.

Sett. 19. It seemeth that in a *seire facias*, upon such a recognizance, it is sufficient to lay the fact alledged for the breach thereof, as having been done *contra pacem*, without using the words *vi et armis*.

was holden, till which the party was bound to keep the peace. Cro.

As to THE TWELFTH POINT, viz. How such recognizance may be forfeited.

B. Pence 20.
Dalt. c. 72.
1. Amb. 127,
128.
Sayer 129.

Sett. 20. There is no doubt but that it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement, as manslaughter, rape, robbery, unlawful imprisonment, &c.

Sec. 21. Also it hath been holden, that it may be forfeited by any treason against the person of the king; and also by any unlawful assembly *in terrorem populi*, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his presence, threatening to beat him, &c.

Lamb. 115. &c.
Dalt. c. 72.
2. H. 7. 2. seems otherwise.
18. Ed. 4. 28.
22. Ed. 4. 35.
C. Car. 398.
499. See the

books cited in the following section, and 2. R. Abr. 545. Pl. 2, 3, 547. E. 3.

4, 5, 6, 7, 8.

Sec. 22. However, it seems that it shall not be forfeited by bare words of heat and choler, as the calling a man knave, teller of lies, rascal, or drunkard; for though such words may provoke a cholerick man to break the peace, yet they do not directly challenge him to it, nor does it appear that the speaker designed to carry his resentment any farther. And it has been said, that even a recognizance for the good behaviour, shall not be forfeited for such words; from whence it follows *à fortiori*, that a recognizance for the peace shall not.

Sayer 140.

C. Eliz. 36.
Moor 249.
2. Roll. 199.
227.
Palmer 126.
Infra p. 261.

Sec. 23. Also there are some actual assaults on the person of another, which do not amount to a forfeiture of such a recognizance; as if an (a) officer, having a warrant against one who will not suffer himself to be arrested, beat or wound him in the attempt to take him; or if a (b) parent in a reasonable manner chastise his child, or a master his servant, (c) being actually in his service at the time; or a (d) schoolmaster his scholar, or a (e) gaoler his prisoner, or even a (f) husband his wife, as some say; or if (g) one confine a friend who is mad, and bind and beat him &c. in such a manner as is proper in such circumstances, or if a man (h) force a sword from one who offers to kill another therewith, or if a man gently lay his hands upon another, and thereby stay him from inciting a dog against a third person; or if (i) I beat one (without k) wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to dispossess me of my land, or goods; or the goods of another delivered to me to be kept for him, and will not desist upon my laying my hands gently on him, and disturbing him; or if a man beats, (l) or, as some say, wound, or maim one who makes an assault upon his person, or that of his (m) wife, parent, child, or

(a) 2. Ed. 4. 6.
2. H. 7. 39.
(b) Dalt. c. 72.
Crom. 136.
(c) 3. H. 6. 25.
1. Sid. 176.
(d) Sum. 31.
1. Sid.
2. Ed. 4. 6.
(e) Dalt. c. 72.
(f) Crom. 28.
136.
F. N. B. 80.
Hurley 119.
Con. 1. Sid.
113. 116.
(g) 22. Aff. 36.
2. R. A. 546.
22. Ed. 4. 5.
(h) C. Jac.
124.
2. R. A. 546.
(i) 3. H. 6. 8.
Lutw. 1483.
C. Jac. 236.

C. Car. 138. 19. H. 6. 31. 10. E. 4. 6. 11. Ed. 4. 28. Keltw. 92. Year. 172.
2. R. A. 547, 548, 549. Pult. 5, 6. Crom. 137. Dalt. c. 72. Inf. c. 64. f. 10.
(k) 2. R. Abr. 547. (l) 41. Aff. 21. 27. Ed. 3. 94. 25. Ed. 3. 42. 8. H. 4. 8.
3. Ed. 4. 48. 12. Ed. 4. 6. B. Tort Dam. 57. 1. Sid. 246. Eady. 128. 2. R. Abr. 547. 1. Ke. 884. 921. 2. Inf. 316. (m) 3. H. 6. 50, 51. 19. H. 6. 31. 66. 12. Ed. 4. 6. Crom. 136. Dalt. c. 72. 2. R. Abr. 549.

master;

OF SURETY OF THE PEACE, Bk. I.

master; especially if it appear that he did all he could to avoid fighting before he gave the wound; or if a (a) man fight with or beat one who attempts to kill any stranger; or if a man even (b) threaten to kill one who puts him in fear of death in such a place where he cannot safely fly from him; or if one (c) imprison those whom he sees fighting, till the heat is over.

(n) 12. H. 8. 2.
(b) 32. H. 6. 18.
10. Ed. 4. 6.
(c) 2. R. Abr.
559.
22. 1. 4. 45.

(d) 2. R. Ab. 546.
19. H. 6. 31. 66.
Dalt. c. 72.
Crom. 136.
Con. 9. Ed. 4. 48.
Salk. 407.
(e) 9. Ed. 4. 48.
B. Tr. f. 189.
(f) Dalt. c. 72.
Lamb. 129.

Sec. 24. According to some opinions, a (d) master shall not forfeit such a recognizance for beating another in defence of his servant. But it is said, that a (e) servant is liable to such forfeiture for beating another in defence of his master's son, though he were commanded by the master so to do, because he is not a servant to the son; and for the like reason it is said, that a (f) tenant shall incur the like forfeiture for beating another in defence of his landlord, &c.

Sec. 25. But it seems agreed, that no one shall forfeit such a recognizance by a bare trespass on another's lands, or goods, unless it be accompanied with some violence to the person.

Sec. 26. And it seems to be the better opinion, that a man is in no danger of such a forfeiture from any hurt done to another by playing at cudgels, or such like sport, by consent, because the intent of the parties seems no way unlawful, but rather commendable, and tending mutually to promote activity and courage. Yet it is said, that he who wounds another in fighting with naked swords, does in strictness forfeit such a recognizance, because no consent can make so dangerous a diversion lawful.

Dalt. c.
B. Co.
F. Bar. 244.

Sec. 27. But it seemeth, that a man shall not forfeit such recognizance, by a hurt done to another merely through negligence, or mischance, as where one soldier hurts another by discharging a gun in exercise, without sufficient caution; for notwithstanding such person must, in a civil action, give the other satisfaction for the damage occasioned by his want of care, yet he seems not to have offended against the purport of such a recognizance, unless he be guilty of some wilful breach of the peace.

obart
R. Ab.

CHAPTER THE SIXTY-FIRST.

OF SURETY FOR THE GOOD BEHAVIOUR.

AND now we are come to SURETY *for the good behaviour*, 4. Com. 248, which, being of great affinity with SURETY *of the peace*, 251. 253. both as to the manner in which it is to be taken, superfeded, and discharged; &c. seems not to require a particular consideration, save only as to the following points :

1. For what misbehaviours it is to be required.
2. For what it shall be forfeited.

AS TO THE FIRST POINT, *viz.* For what misbehaviours surety is required.

Sett. 1. It is to be observed, that by 34. Edw. 3. c. 1. " Justices of peace are empowered to restrain offenders, " rioters, and all other barrators, and to pursue, arrest, " take, and chastise them, according to their trespass, or " offence; and to cause them to be imprisoned, and duly " punished according to the laws and customs of the realm, " and according to that which to them shall seem best to " do by their discretions, and good advisement; and also " to inform them, and to enquire of all those who have " been pillors and robbers in the parts beyond the sea, and " be now come again, and go wandering, and will not labour as they were wont in times past, and to take and " arrest all those that they may find by indictment or by " suspicion, and to put them in prison, and to take of all " them that be not of good fame, where they shall be " found, sufficient surety and mainprize of their good behaviour towards the king, and his people, and the other " duly to punish, to the intent that the people be not by " such rioters troubled nor indamaged, nor the peace blemished, nor merchants, nor others passing by the highways of the realm disturbed, nor put in the peril which " may happen of such offenders."

Vide Barlow, 524.

Sett. 2. In the construction hereof there seem to have been some opinions, that the statute, speaking of those that be not of good fame, means only such as are defamed, and justly suspected that they intend to break the peace, and that it does not any way extend to those who are guilty of other

4. Inst. 181. 2. H. 7. 2. 3. 13. H. 7. 10. Pulson 18.

4. Burn 270.
Lamb. 115,
116, 117.
Dalt. c. 75.

12. Mod. 566.
(a) 13. H. 7. 10.
(b) Crom. 140.
(c) C. Eliz. 78
1. Levin. 52,
53. 107.
11. Co. 98.
3. Roll. 224.
Latch. 22.
Con. C. Eliz.
689. 449. Palmer 130. 4. Roll. 227, 228. 3. Bullst. 139, 140. Cro. Car. 409.

other misbehaviours not relating to the peace. But this seems much too narrow a construction, since the abovementioned expression of "persons of evil fame," in common understanding, as properly includes persons of scandalous behaviour in other respects, as those who by their quarrelsome behaviour give just suspicion of their readiness to break the peace. And accordingly it seems to have been always the better opinion, that a man may be bound to his good behaviour for many causes of scandal which give him a bad fame, as being contrary to good manners only; as for (a) haunting bawdy-houses with women of bad fame; or for (b) keeping bad women in his own house; or for speaking words of contempt of an inferior (c) magistrate; as a justice of peace, or mayor of a town, &c. though he be not then in the actual execution of his office, or of an inferior officer of justice, as a constable, and such like, being in the actual execution of his office.

Sec. 3. However, it seems the better opinion, that no one ought to be bound (d) to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalize the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems, that he (e) who barely calls another rogue, or rascal, or teller of lies, drunkard, &c. ought not, for such cause, to be bound to the good behaviour.

Dalt. 75.
1. Roll. 150.
2. Ven. 22, 23,
24.

Sec. 4. However, I cannot find any certain precise rules for the direction of the magistrate in this respect, and therefore am inclined to think, that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous, as of those who sleep in the day, and go abroad in the night, and of such as keep suspicious company, and of such as are generally suspected to be robbers, &c. and of eve-droppers, and common drunkards, and all other persons, whose misbehaviour may reasonably be intended to bring them within the meaning of the statute, as persons of evil fame, who, being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want

want of sureties, he must show the cause, &c. with convenient certainty (1).

(1) Security for good behaviour may be taken: For using opprobrious terms in a court of justice. 1. Lev. 107. Adjoining justices of ignorance in the excise laws. 1. Vent. 16. Publishing an obscene book. Fort. 193. For exciting discontents in the minds of the people. 2. Vent. 24. For offering medicines to destroy a child in the womb. Cro. Eliz. 449. For obstructing another on his necessary way to a court of justice. 2. Lill. Reg. 649. For disturbing a licensed preacher. 1. Mar. s. 2. 3. For unlawful fishing or hunting. 5. Eliz. c. 21. For neglecting church a month. 23. Eliz. c. 1. For hunting or stealing deer or conies. 1. Jac. 1. c. 13. sed vide 16. Geo. 3. c. 30. And it is a usual part of the judgment in a misdemeanour. 4. Bac. Ab. 698. But a justice of a peace cannot compel the security upon a general information. Str. 16. And whether a person taken upon the warrant of a secretary of state for a libel shall give security for his good behaviour, seems unsettled. 1. Will. 29. sed vide 2. Will. 160. and for a very full account of this title, 4. Burn. 269. 2S3.

As to THE SECOND POINT, viz. For what misbehaviours such a recognizance shall be forfeited.

SECT. 5. It is laid down as a general rule in the argument of *Stamp and Hide's case*, that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it. Yet this is since denied in *Heyward's case*; and indeed does by no means seem to be maintainable, because the statute, in ordering persons of evil fame to be bound in this manner, seems in many cases chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do; and in that respect requires them to secure the publick from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them, or not; and it would be extremely hard in such cases to make persons forfeit their recognizance, who yet may justly be compellable to give one, as those who keep suspicious company, or those who spend much money idly, without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, &c.

13. H. 7. 10. —
Dalt. c. 75.

SECT. 6. However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others, for which such a recognizance cannot be forfeited; as for going armed with great numbers to the terror of the people, or speaking words tending to sedition. &c. and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may never actually happen.

2. H. 7. 2.
C. Eliz. 86.
Moor 249.
2. Roll. 228.
150. 199.
C. Car. 499.

2. Leo. 160.
Godb. 622. 22.
Lamb. 116. 113.
C. Jac. 412.

It may be discharged on motion on producing prosecutor's consent, verified by affidavit. *Hardwicke's Cases*, 158. Or consenting by Counsel? 1. Burr. 703. Sed vide ch. 60. l. 17.

• • • • •

CHAPTER THE SIXTY-SECOND.

OF ASSAULTS AND BATTERIES.

AND now I am come to consider the several kinds of actual disturbances of the peace.

And these are, either, Such as may be committed by one or two persons; or, Such as require a great number.

Those which may be committed by one or two persons, are, assaults and batteries; or affrays; or forcible entries and detainers.

As to ASSAULTS AND BATTERIES, I shall consider the following particulars:

1. What shall be said to be an assault.
2. What shall be said to be a battery.
3. In what cases assault and battery may be justified.
4. In what manner they are to be punished.

As to THE FIRST POINT, *viz.* What shall be said to be an *assault*.

Fulton 4.
6. Mod. 173,
174.
2. R. Abr. 545.
1. Vent. 256.
1. Mod. 3.
1. Keb. 921.
41. Ed. 3. 40.
42. Ed. 3. 7.
45. Ed. 3. 24, 25.
22. Aff. 60.
2. R. Abr. 545.
10. Mod. 187.
2. Keb. 545.
Law of Evid.
235.

Sec. 1. It seems that an assault is an attempt, or offer, with force and violence, to do a corporal hurt to another; as by striking at him with or without a weapon; or presenting a gun at him at such a distance to which the gun will carry; or pointing a pitch-fork at him, standing within the reach of it; or by holding up one's fist at him; or by any other such-like act done in an angry threatening manner: and from hence it clearly follows, that one charged with an assault and battery, may be found guilty of the former, and yet acquitted of the latter. But every battery includes an assault; therefore on an indictment of a fault and battery, in which the assault is ill laid, if the defendant be found guilty of the battery, it is sufficient. Notwithstanding the many ancient opinions to the contrary, it seems agreed at this day, that no words whatsoever can amount to an assault.

As

AS TO THE SECOND POINT, viz. What shall be said to be a *battery*.

Seft. 2. It seems that any injury whatsoever, be it never so small, being actually done to the person of a man in an angry, revengeful, rude, or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way, are batteries in the eye of the law. But it is said to be no battery to lay one's hand gently on another whom an officer has a warrant to arrest, and to tell the officer that this is the man he wants.

22. Aff. 11.
Pult. 3.
Lamb. 126.
Salk. 384.
6. Mod. 147.
172.
1. Mod. 3.
3. Lev. 404.
Skin. 387.
2. R. Abr. 546.

AS TO THE THIRD POINT, viz. In what cases an assault and battery may be justified.

Seft. 3. This is so fully set forth already in the chapter of *Surety of the Peace*, that there seems to be no need of any further consideration thereof in this place; and therefore I shall only add, that where a man in his own defence beats another who first assaults him, &c. he may take an advantage thereof upon an *indictment*, as well as upon an *action*; but with this difference, that in the first case he may give it in evidence upon the plea of *not guilty*, and in the latter he must plead it specially.

6. Mod. 172.
230. 263.
4. Comm. 145.
216.
11. Mod. 435.
2. Salk. 642.
L. Ray. 177.
1. Sid. 246.
Hoit 699.

AS TO THE FOURTH POINT, How unlawful assaults and batteries are punished.

Seft. 4. There is no doubt but that the wrong doer is subject both to an action at the suit of the party, wherein he shall render damages, &c. and also to an indictment, at the suit of the king, wherein he shall be fined according to the heinousness of the offence.

8. Mod. 233.
1. Bac. Ab. 156.

† *Seft. 5.* By 5. Hen. 4. c. 6. and 11. Hen. 6. c. 11. To assault or affray any of the members of the house of lords, or house of commons, or other council of the king, or any of their servants, in their way to, or attendance on parliament, is punishable, upon non-surrender, or proclamation, with double damages, and fine and ransom at discretion."

Form of indictment, Cro. Cir. 121.

† *Seft. 6.* By 9. Edw. 2. c. 3. "If any lay violent hands on a clerk, he may be indicted before the king for the peace broken; and sued before the bishop for the spiritual offence."

4. Comm. 218.
2. Inst. 492.
620.

† *Seft. 7.* By 5. Eliz. c. 4. s. 21. "If any servant assault or affray his master, mistress, or overseer, he shall

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"suffer

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“ suffer imprisonment, not exceeding a year, on conviction
 “ before two justices of the county, or the chief magistrate
 “ and two corporators of a town.—And if further punish-
 “ ment should appear necessary, the justices in sessions, or
 “ the head magistrate and four or six corporators in a town,
 “ may exercise their discretion, so that the punishment ex-
 “ tend not to life or limb.”

Cro. Cir. 101. † *Stat.* 8. By 9. Ann. c. 16. “ To assault and strike
 “ any privy councillor, in the council, or in any committee
 “ thereof, in the execution of his duty, is death.”

† *Stat.* 9. By 9. Ann. c. 14. s. 8. “ To assault and beat
 “ any other on account of money won by gaming, in the
 “ manner described, is forfeiture of goods, and two years
 “ imprisonment.”

Vide O. B. 1781, No. 261. † *Stat.* 10. By 6. Geo. 1. c. 23. s. 11. “ To assault an-
 Cro. Cir. 122. “ other in the street, with intent to spoil their cloaths, is
 “ transportation.”

Ante p. 225. † *Stat.* 11. By 9. Geo. 1. c. 22. “ To assault another
 “ by wilfully shooting at him, is felony without clergy.”

Ante p. 148. † *Stat.* 12. By 7. Geo. 2. c. 21. “ To assault with in-
 “ tent to rob, is transportation.”

Ante p. 239. † *Stat.* 13. By 12. Geo. 1. c. 24. “ To assault any
 “ master woolcomber, or weaver, or other person concern-
 “ ed in the woollen manufactory, whereby he shall receive
 “ any bodily hurt, for not complying with any of the bye
 “ laws which are mentioned in the act, or shall write or
 “ send any threatening letter, &c. &c. is transportation for
 “ seven years.”

CHAPTER THE SIXTY-THIRD.

OF AFFRAYS.

IN treating of affrays, I shall consider,

4. Comm. 145.

1. What shall be said to be an affray.
2. How far it may be suppressed by a private person.
3. How far by a constable.
4. How far by a justice of peace.
5. In what manner the several kinds of affrays may be punished.

AS TO THE FIRST POINT, *viz.* What shall be said to be an affray.

SECT. 1. It is said, that the word "*affray*" is derived from the French word *effraier*, to terrify, and that, in a legal sense, it is taken for a publick offence to the terror of the people. From this definition it seems clearly to follow, that there may be an *assault* which will not amount to an *affray*; as where it happens in a private place, out of the hearing or seeing of any, except the parties concerned; in which case it cannot be said to be to the terror of the people; and for this cause such a private assault seems not to be inquirable in a court of law, as all affrays certainly are, as being common nufances.

3. Inst. 158.
Dalt. c. 8.

Lamb. 125,
126.
4. H. 6. 10.
8. Ed. 4. 5.

SECT. 2. Also it is said, that no quarrellsome or threatening words whatsoever shall amount to an affray; and that no one can justify laying his hands on those who shall barely quarrel with angry words, without coming to blows; yet it seemeth, that the constable may, at the request of the party threatened, carry the person, who threatens to beat him, before a justice, in order to find sureties.

23. Ed. 4. 45.
Dalt. c. 8.
Lamb. Constable, 14.

SECT. 3. Also it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge, or even barely to endeavour to provoke another to send a challenge, or to fight; as by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight, &c.

Popham 158.
3. Inst. 158.
1. Sid. 186.
1. Keb. 694.
Hob. 120. 219.
2. R. Abr. 78.
1. Burr. 316.
Carr & Hankey.

† By 9. Ann. c. 14. f. 8. "Whoever shall challenge or
 " provoke to fight any other person or persons whatsoever,
 " upon account of any money, won by gaming, playing,
 " or betting at any of the games mentioned in the act,
 " shall, on conviction by indictment, or information, for-
 " feit all their goods, chattels, and personal estate, and suf-
 " fer imprisonment without bail, in the county prison for
 " two years."

Lamb. 126.
 3. Inst. 160. 76.
 1. R. Abr. 78.
 Summary 137.

Sec. 4. But granting that no bare words, in the judg-
 ment of law, carry in them so much terror as to amount to
 an affray, yet it seems certain, that in some cases there
 may be an affray where there is no actual violence; as where
 a man arms himself with dangerous and unusual weapons,
 in such a manner as will naturally cause a terror to the peo-
 ple, which is said to have been always an offence at com-
 mon law, and is strictly prohibited by many statutes.

By 2. Edw. 3. it is enacted, "That no man, great
 " nor small, of what condition soever he be, except the
 " king's servants in his presence, and his ministers in ex-
 " ecuting of the king's precepts, or of their office, and such
 " as be in their company assisting them, and also upon a
 " cry made for arms to keep the peace, and the same, in
 " such places where such acts happen, be so hardy to come
 " before the king's justices, or other of the king's ministers
 " doing their office, with force and arms, nor bring no
 " force in affray of peace, nor to go nor ride armed by
 " night nor by day, in fairs, markets, nor in the presence
 " of the justices or other ministers, nor in no part else-
 " where, upon pain to forfeit their armour to the king,
 " and their bodies to prison, at the king's pleasure. And
 " that the king's justices in their presence, sheriffs, and
 " other ministers in their bailiwicks, lords of franchises,
 " and their bailiffs in the same, and mayors and bailiffs of
 " cities and boroughs, within the same cities and boroughs,
 " and borough-holders, constables and wardens of the
 " peace within their wards, shall have power to execute
 " this act: and that the justices assigned, at their coming
 " down into the country, shall have power to enquire how
 " such officers and lords have exercised their offices in this
 " case, and to punish them whom they find that have not
 " done that which pertained to their office;" and this sta-
 " tute is farther enforced by 7. Rich. 2. c. 13. and 20. Rich.
 2. c. 1.

And in the exposition of it the following points have been holden :

Sec. 5. FIRST, That any justice of peace, or other person who is empowered to execute this statute, may proceed thereon, either *ex officio*, or by force of a writ out of chancery, formed upon the statute, and that if he find any person in arms contrary to the form of the statute, he may seize the arms, and commit the offender to prison; and that he ought also to make a record of his whole proceeding, and certify the same into the chancery, where he proceeds by force of the said writ, or into the exchequer, where he proceeds *ex officio*.

F. N. B. 149.

3. Inst. 161.
Dalt. c. 22.
Lamb. 168, &c.
Dalif. 23.
2. Bull. 330.

Sec. 6. SECONDLY, That where a justice of peace, &c. proceeds upon the said writ, he may not only imprison those whom he shall find offending against the statute in his own view, but also those who shall be found by an inquest taken before him, to have offended in such manner in his absence. And I do not see why he may not do the same where he proceeds *ex officio*; for seeing the said writ hath no other foundation but the said statute, and is the most authentick explication thereof, it seemeth that the rules therein prescribed should be the best direction for all proceedings upon that statute.

C. Eliz. 294.
Con. Lamb.
170.

Sec. 7. THIRDLY, That the under-sheriff may execute the said writ, being directed to the sheriff, if it name him only by the name of his office, and not by his proper name, and do not expressly command him to act in his proper person.

C. Eliz. 294.

Sec. 8. FOURTHLY, That a man cannot excuse the wearing such armour in publick, by alledging that such a one threatened him, and that he wears it for the safety of his person from his assault. But it hath been resolved, that no one shall incur the penalty of the said statute for assembling his neighbours and friends in his own house, against those who threaten to do him any violence therein, because a man's house is as his castle.

24. Ed. 3. 33.
21. H. 7. 39.
3. Inst. 161.
Con. 2. Roll 73.
2. H. 7. 39.

Sec. 9. FIFTHLY, That no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people; from whence it seems clearly to follow, that persons of quality are in no danger of offending against this statute by wearing common weapons, or having their usual number of attendants with them for their ornament or defence, in such places, and upon such occasions, in which it is the com-

Mod. 117.
Bull. 330.

Crom. 64.

mon fashion to make use of them, without causing the least suspicion of an intention to commit any act of violence or disturbance of the peace. And from the same ground it also follows, that persons armed with privy coats of mail, to the intent to defend themselves against their adversaries, are not within the meaning of this statute, because they do nothing *in terrorem populi*.

Pop. 121, 122.

SECT. 10. SIXTHLY, That no person is within the intention of the said statute, who arms himself to suppress dangerous rioters, rebels, or enemies, and endeavours to suppress or resist such disturbers of the peace or quiet of the realm; for persons who so arm themselves, seem to be exempted out of the general words of the said statute, by that part of the exception, in the beginning thereof, which seems to allow all persons to arm themselves, upon a cry made for arms, to keep the peace, in such places where such acts happen.

As to THE SECOND POINT, *viz.* How far an affray may be suppressed by a private person.

Lamb. 131.
3. Inst. 158.
2. Inst. 52.
22. E. 4. 44.
Dalt. c. 8.
Lamb. 131.
Infra f. 17.

SECT. 11. It seems agreed, that any one who sees others fighting, may lawfully part them, and also stay them till the heat be over, and then deliver them to the constable, who may carry them before a justice of peace, in order to their finding sureties for the peace. Also it is said, that any private person may stop those whom he shall see coming to join either party; and from hence it seems clearly to follow, that if a man receive a hurt from either party in thus endeavouring to preserve the peace, he shall have his remedy by an action against him. Also upon the same ground it seems equally reasonable, that if he unavoidably happen to hurt either party, in thus doing what the law both allows and commends, he may well justify it, inasmuch as he is no way in fault; and the damage done to the other, was occasioned by a laudable intention to do him a kindness.

3. Inst. 138.
Lamb. 131.
Dalt. c. 8.

Lamb. 131.
Dalt. c. 8.
3. Inst. 158.
B. F. Imp. 35.
44.
40. H. 7. 20.
2. Inst. 52.

SECT. 12. However it seems clear, that if either party be dangerously wounded in such an affray, and a stander-by, endeavouring to arrest the other, be not able to take him without hurting, or even wounding him, yet he is no way liable to be punished for the same, inasmuch as he is bound, under pain of fine and imprisonment, to arrest such an offender, and either detain him till it appear whether the party will live or die, or carry him before a justice of peace, by whom he either is to be bailed or committed, &c.

As to THE THIRD POINT; *viz.* How far an affray may be suppressed by a constable.

Sett. 13. It seems agreed, that a constable is not only empowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavours to this purpose; and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable with fine and imprisonment.

3. Inst. 158.
Lamb. 132.
133.
Dalt. c. 8.
3. H. 7. 10.

Sett. 14. And it is said, that if a constable see persons either actually engaged in an affray, as by striking, or offering to strike, or drawing their weapons, &c. or upon the very point of entering upon an affray; as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice of the peace, to the end that such justice may compel him to find sureties for the peace, &c. or he may imprison him of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find such surety by obligation. But it seems, that he has no power to imprison such an offender in any other manner, or for any other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence; and it is said, that he ought not to lay hands on those who barely contend with hot words, without any threats of personal hurt, and that all which he can do in such a case, is to command them under pain of imprisonment to avoid fighting.

Lamb. 132,
133.
Dalt. c. 1. 8.
B. Surety, 23.
36.
C. Eliz. 375.
9. Ed. 4. 26.
Moor 284.
3. H. 4. 9.
22. E. 4. 35.
10. Ed. 4. 18.
5. H. 7. 6.
Sav. 97, 98.

Sett. 15. But he is so far intrusted with a power over all actual affrays, that though he himself is a sufferer by them, and therefore liable to be objected against, as likely to be partial in his own cause, yet he may suppress them; and therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender, in the same manner as if he were no way a party.

5. H. 7. 6.
1. Roll. 238.
2. Bull. 325.

Sett. 16. And if an affray be in a house, the constable may break open the doors to preserve the peace, and if affrayers fly to a house and he follow with fresh suit, he may break open the doors to take them.

13. Ed. 4. 9.
7. Ed. 3. 12.
Dalt. c. 8. 67.
Lamb. 133,
134.

Sett. 17. But it is said, that a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice of peace, unless a felony were done or likely to be done; for it is the proper business of a constable to preserve the peace, not to punish the breach

C. Eliz. 375.
Owen 105.

breach of it; nor does it follow from his having power to compel those to find sureties who break the peace in his presence, that he has the same power over those who break it in his absence, inasmuch as in such case it is most proper to be done by those who may examine the whole circumstances of the matter upon oath, which a constable cannot do; yet it is said that he may carry those before a justice of peace, who were arrested by such as were present at an affray, and delivered by them into his hands.

Lamb. 131.
Dalt. c. 8.

AS TO THE FOURTH POINT, *viz.* In what manner an affray may be suppressed by a justice of peace.

Summary 136.
Dalt. c. 8.
B. F. Imp. 6.
12. 33.
14. H. 8. 7
Moor 468.

Sec. 18. There is no doubt but that he may and must do all such things to that purpose, which a private man or constable are either enabled, or required by the law to do. But it is said, that he cannot without a warrant authorize the arrest of any person for an affray out of his view. Yet it seems clear, that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace.

Sec 38. Ed. 3.
6, 7.

22. Aff. 56.
5. Mod. 84.

Summary 36.
Dalt. c. 8.
Popham 153.

Sec. 19. Also it seems, that a justice of peace has greater power over one who has dangerously wounded another in an affray, than either a private person or a constable; for there does not seem to be any good authority, that these have any power at all to take sureties of such an offender; but it seems certain, that a justice of the peace has a discretionary power either to commit him, or to bail him, till the year and day be past; but it is said, that he ought to be very cautious how he takes bail, if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being severely fined, if he shall appear, upon the whole circumstances of the case, to have been too favourable.

AS TO THE FIFTH POINT, *viz.* In what manner the several kinds of affrays are to be punished.

Sec. 20. It sufficiently appears from the foregoing part of this chapter, how such affrays as are accompanied with force and arms, are to be dealt with upon the *statute of Northampton*. And therefore I shall only examine in this place, what penalties other affrays are liable unto.

As to which it is to be observed, that all affrays in general are punished by fine and imprisonment, the measure of which is to be regulated by the discretion of the judges according to the circumstances of the case, which very much

much vary the nature of this crime, and in some cases make it so inconsiderable as scarce to deserve to be taken notice of; and in others make it an offence of a very heinous nature.

As in the following instances: **FIRST**, In respect of the dangerous tendency thereof. **SECONDLY**, In respect of the persons against whom it is committed. **THIRDLY**, In respect of the place wherein it happens.

SECT. 21. And **FIRST**, An affray may receive an aggravation from the dangerous tendency thereof; as where persons coolly and deliberately engage in a *duel*, which cannot but be attended with the apparent danger of murder, and is not only an open defiance of the law, but carries with it a direct contempt of the justice of the nation, as putting men under a necessity of righting themselves; upon which considerations, persons convicted of barely sending a challenge, have been adjudged to pay a fine of one hundred pounds, and to be imprisoned for one month without bail, and also to make a publick acknowledgment of their offence, and to be bound to their good behaviour. Popham 153.
3. Inst. 158.
1. Sid. 186.
1. Kcb. 694.
Moot 563.

SECT. 22. **SECONDLY**, An affray may receive an aggravation from the persons against whom it is committed; as where the officers of justice are violently disturbed in the due execution of their office, as by the rescous of a person legally arrested, or the bare attempt to make such a rescous, for all the ministers of the law are under its more immediate protection.

SECT. 23. **THIRDLY**, An affray may receive a farther aggravation from the place wherein it is committed; and upon this respect all affrays in the king's court are so severely punished, as hath been shewn already in chapter 21. Upon the same account also, all affrays in a church or church-yard, have been always esteemed very heinous offences, as being very great indignities to the Divine Majesty, to whose worship and service such places are immediately dedicated. And upon this consideration all irreverent behaviour in these places hath been esteemed so criminal by the makers of our laws, that they have not only severely punished such disturbances in them which are punishable wherever they happen, as all actual affrays, &c. but also such which if they happen elsewhere, are not punishable at all; as bare quarrelsome words, and even such which would be commendable if done in another place, as arrests by virtue of legal process. 12. Co. 107.
1. Kcb. 292.
491.
1. Mod. 186.

But,

But, for the better understanding hereof, I shall consider the several statutes made for this purpose.

The offence
of making an
affray in a
church or
church-yard

Stat. 24. And first, it is enacted by 5. & 6. Edw. 6. c. 4. "That if any person whatsoever shall, by words only, quarrel, chide, or brawl, in any church or church-yard, that then it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by two lawful witnesses, to suspend every person so offending; that is to say, if he be a layman, *ab ingressu ecclesiæ*, and if he be a clerk, from the ministration of his office, for so long time as the same ordinary shall by his discretion think meet and convenient, according to the fault."

Stat. 25. And it is further enacted by the said statute, "That if any person shall smite or lay any violent hands upon any other, either in any church or church-yard, that then, *ipso facto*, every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ's congregation."

Stat. 26. And it is also further enacted by the said statute, "That if any person shall maliciously strike any person with any weapon in any church or church-yard, or shall draw any weapon in any church or church-yard, to the intent to strike another with the same weapon, that then every person so offending, and thereof being convicted by verdict of twelve men, or by his own confession, or by two lawful witnesses, before the justices of assize, justices of oyer and terminer, or justices of peace in their sessions, by force of this act, shall be adjudged by the same justices before whom such person shall be convicted, to have one of his ears cut off, &c. and besides that every such to be, and stand *ipso facto* excommunicated, as aforesaid."

Stat. 27. And in the exposition hereof it hath been holden:

Dyer 275.
C. Jac. 462.
1. Ven. 146.
Lit. 149.
Hestl. 86.
C. Eliz. 919.
1. Burr. 240.
2. Ld. Ray. 850.
20. Mod. 65.
179.
1. Ventris 146.
B. R. H. 179.
280. 224.
B. Prohib. 14.

FIRST, That notwithstanding the words of the statute be expressed, that he who smites another in the church, &c. shall; *ipso facto*, be deemed excommunicate, yet there ought either to be a precedent conviction at law, which must be transmitted to the ordinary, or else the excommunication must be declared in the spiritual court upon a proper proof of the offence there; for it is implied in every penal law, that no one shall incur the penalty thereof, till he be found guilty upon a lawful trial. Also it must be intended in the construction of this statute, that the excommunication ought

ought to appear judicially, for otherwise there could be no absolution.

Seff. 28. SECONDLY, That he who strikes another in a church, &c. can no way excuse himself, by shewing that the other assaulted him.

C. Jac. 367.
C. Car. 467.
Noy 171. See
Wynne's Euc-
nomus, 3. vol. 46, 47.

Seff. 29. THIRDLY, That church-wardens, or perhaps private persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or gently lay their hands on those who disturb the performance of any part of divine service, and turn them out of the church, are not within the meaning of the statute.

1. Saund. 15,
14.
1. Sid. 301.
3. Keb. 174.
1. Mod. 168.

This act contains three distinct clauses levelled against three distinct offences in churches and church-yards. First, quarrelling, chiding, or brawling by words only. Secondly, smiting or laying violent hands. Thirdly, striking with a weapon; or drawing one with intent to strike. The ecclesiastical court is not prohibited from proceeding upon the two first clauses; but upon the third clause there must be a previous conviction transmitted to the ordinary, &c. If they proceed for damages on either clause, they shall be prohibite; the proceedings of the ecclesiastical court and the king's bench being *diverso intuitu*, the one to punish, and the other to amend. 1. Burr. 243. Vide 11. Mod. 200. Cathedral churches and church-yards, which belong to them, are within this statute. 1. Leon. 248.

Seff. 30. Also it is enacted by 1. Mary, *seff. 2. c. 3.* That if any person or persons, of their own power and authority, shall willingly and of purpose by open and overt word, fact, act, or deed, maliciously or contemptuously molest, let, disturb, vex or trouble, or by any other unlawful ways and means, disquiet, or misuse, any preacher who shall be licensed, allowed, or authorized to preach by the Queen's highness, or by any archbishop, or bishop of this realm, or by any other lawful ordinary, or by any of the universities of *Oxford* and *Cambridge*, or otherwise lawfully authorized or charged, by reason of his or their cure, benefice, or other spiritual promotion or charge, in any of his, or their open sermon, &c. or if any person or persons shall maliciously, willingly, or of purpose, molest, let, disturb, vex, disquiet, or otherwise trouble any parson, vicar, parish-priest, or curate, or any lawful priest, preparing, saying, doing, singing, ministering or celebrating the mass, or other such divine service, sacraments, or sacramentals, as was most commonly frequented and used in the last year of the reign of the late sovereign lord king Henry the Eighth, or that at any time hereafter should be allowed, set forth, or authorized by the queen's majesty; or if any person or persons shall unlawfully, contemptuously, sacrilegiously, or by assault, or by force, or by violence, or by any other unlawful manner, molest, let, disturb, vex, disquiet, or otherwise trouble any parson, vicar, parish-priest, or curate, or any lawful priest, preparing, saying, doing, singing, ministering or celebrating the mass, or other such divine service, sacraments, or sacramentals, as was most commonly frequented and used in the last year of the reign of the late sovereign lord king Henry the Eighth, or that at any time hereafter should be allowed, set forth, or authorized by the queen's majesty; or if any person or persons shall unlawfully, contemptuously, sacrilegiously, or by assault, or by force, or by violence, or by any other unlawful manner, molest, let, disturb, vex, disquiet, or otherwise trouble any parson, vicar, parish-priest, or curate, or any lawful priest, preparing, saying, doing, singing, ministering or celebrating the mass, or other such divine service, sacraments, or sacramentals, as was most commonly frequented and used in the last year of the reign of the late sovereign lord king Henry the Eighth, or that at any time hereafter should be allowed, set forth, or authorized by the queen's majesty;

The offence of
disturbing di-
vine worship.

Sacrilegious
affrays.

“ously, or maliciously, of their own power or authority;
 “pull down, deface, spoil, or otherwise break any altar
 “or altars, of any crucifix, or cross, in any church, cha-
 “pel, or church-yard; every such offender and offenders,
 “his or their aiders, procurers, or abettors, may be appre-
 “hended by any constable, or churchwarden of the place
 “where such offence shall be committed, or by any other
 “officer or person then being present at the time of the said
 “offence; and being so apprehended shall be brought be-
 “fore some justice of peace, by whom they shall be com-
 “mitted forthwith, and within six days the matter shall
 “be examined by the same, together with some other jus-
 “tices; and on proof by two witnesses, or confession,
 “the offender shall be committed for three months, and
 “also till the next quarter sessions, where, if they repent,
 “they shall be discharged upon giving sureties for their
 “good behaviour for a year, and if they do not repent they
 “shall be committed till they do.”

2. Jon. 159.
 Con. Aleyn
 5b.
 2. Bulst. 51.

Seft. 31. It hath been resolved, that the disturbance of a minister in saying the present common prayer is within this statute; for the express mention of such divine service as should afterwards be authorized by *queen Mary*, doth implicitly include such also as should be authorized by her successors; for since the king never dies, a prerogative given generally to one, goes of course to others.

The offence of
 disturbing a
 dissenting
 congregation.

Seft. 32. Also it is enacted by 1. Will. and Mary, c. 18. f. 19. “That if any person shall willingly and of purpose,
 “maliciously or contemptuously come into any cathedral
 “or parish-church, chapel, or other congregation per-
 “mitted by the said act, and disquiet or disturb the same,
 “or misuse any preacher or teacher, such persons, upon
 “proof before any justice of peace, by two or more suf-
 “ficient witnesses, shall find two sureties to be bound by
 “recognizance in the penal sum of fifty pounds, and on
 “default of such sureties shall be committed to prison,
 “there to remain till the next general or quarter sessions,
 “and upon conviction of the said offence, at the said ge-
 “neral or quarter sessions, shall suffer the pain and penalty
 “of twenty pounds.”

Offence of
 disturbing Ca-
 tholic congrega-
 tions.
 Ante vol. i.
 page 62. f. 8.

† *Seft. 33.* By 31. Geo. 3. c. 32. f. 10. the same is enacted with respect to *Roman Catholics* who shall conform to the directions of this statute, which is particularly set forth in the former part of this work.

CHAPTER THE SIXTY-FOURTH.

OF
FORCIBLE ENTRIES

AND

DETAINERS.

IT seems that at the common law a man disseised of any lands, or tenements (if he could not prevail by fair means), might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time.

Lamb. 135.
Dalt. c. 76.
Crom. 70.

Sec. 1. And it seems certain, that even at this day, he who is wrongfully dispossessed of his goods, may justify the re-taking of them by force from the wrong-doer, if he refuse to re-deliver them; for the violence which happens through the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought.

Keilw. 92.
Yelv. 172.
C. Jac. 236.
Sup. c. 60. f. 23.
Co. Lit. 134.
Hal. Anal. 346.
3. Comm. 4, 5.

Sec. 2. But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions; it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice.

Sec. 3. However, even at this day, in an action of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any enquiry concerning the force. For howsoever he may be punishable at the king's suit, for doing what is prohibited by statute, as a contemner of the laws and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself (1).

17. H. 7. 17.
21. H. 6. 39.
F. N. B. 249.
B. Force, 5. 11.
29.

(1) An indictment will lie at common law for a forcible entry, though generally brought on the acts of parliament. 3. Burr. 1698. 1732. But it must shew upon the face of it sufficient actual force. 3. Burr. 1702. Form of the indictment at common law, &c. Vide Crown Circuit, 255.

Sec. 7.

OF FORCIBLE ENTRIES Bk. I,

Sec. 4. Since therefore offences of this nature are made such, not by the common law but by statute; I shall, for the better understanding thereof, consider the several statutes relating to this subject.

Stat. 5. And first, I find it agreed, that by 2. Edw. 3. which is commonly called the *statute of Northampton*; if there be any use made of arms to strike a terror into the persons upon whom a forcible entry is made, any justice of peace or other officer, who is within the purview of that statute, may both seize the arms for the king's use, and also imprison the offenders, but not restore the party injured to his possession; but the said statute having been fully set forth in the foregoing chapter, I shall proceed to those statutes which more directly relate to this matter.

Sec. 6. And first it is enacted by 5. Rich. 2. c. 7. in the following words: "And also the king defendeth, that none
" from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and
" in such case not with strong hand, nor with multitude
" of people, but only in peaceable and easy manner.
" And if any man from henceforth do to the contrary,
" and thereof be duly convicted, he shall be punished by
" imprisonment of his body, and thereof ransomed at the
" king's will."

Sec. 7. But this statute being found by experience not sufficiently to have provided against the mischief intended to be redressed by it, inasmuch as it gave no speedy remedy to the party injured against the wrong-doer, but left him to the common course of proceeding by way of indictment or action, and made no provision at all against forcible detainers, it was thought necessary to supply these defects by other additional laws.

And to this purpose it was further enacted by 15. Rich. c. 2. "That the said statute and all others made against forcible entries, &c. shall be fully executed: and farther,
" that at all times that such forcible entries shall be made,
" and complaint thereof cometh to the justices of peace, or
" to any of them, that the same justices or justice take
" sufficient power of the county, and go to the place where
" the force is made; and if they find any that hold such
" place forcibly, after such entry made, they shall be taken
" and put in the next gaol, there to abide convicted by the
" record of the same justices or justice, until they have
" made fine and ransom to the king. And that all the
" people of the county, as well the sheriff as others, shall
" be attendant upon the same justices, to go and assist the
" same justices to arrest such offenders, upon pain of imprisonment."

"prisonment, and to make fine to the king; and in the same manner it shall be done of them that make such forcible entries in benefices or offices of holy church."

Sec. 8. In the exposition of this statute it hath been holden, that one justice of peace may make a record of such a forcible holding, and that such record is not traversable, because the justice of peace in making thereof, acts not as a minister but as a judge.

Also it hath (a) lately been solemnly resolved in colonel *Leighton's Case*, that the same justice may assess the fine for this offence, either before the time of conviction, or after; but it is said, that such justice of peace hath no power to commit the offender to gaol, unless he do it immediately upon the fact, or unless the offender shall afterwards refuse to find sureties for his good behaviour.

Hil. 1. Geo. 2. Stra. 794.

8. Co. 121.

Dalt. c. 42.

Lamb. 151.

(a) B.R. Hill, 1708.

Salkeld 353.

Keilw. 41. 8.

Crom. 195,

196.

Dalt. c. 22.

Moor 848. See

Rex v. Elwell,

Ld. Ray. 1515.

Also it was holden by the Court in *Leighton's Case* above-mentioned, that if a person, against whom a complaint shall be made as having been guilty of a forcible entry, shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction, the justice must needs have this power as incidental to what is expressly given him.

Salkeld 353.

2. L. Ray. 1514.

2. Strange 794.

Bar. K. B. 30.

38, 39.

Self. Caf. 289.

Sec. 9. But this statute being likewise very defective in many respects, as in not giving any remedy against those who were guilty of a forcible detainer after a peaceful entry; nor even against those who were guilty of both a forcible entry and a forcible detainer, if they were removed before the coming of a justice of peace; and in not giving the justices of the peace any power to restore the party injured by such force to his possession; and also in not fixing any pain on the sheriff for not obeying the precepts of the justices in the execution of the said statutes; it was farther enacted by 8. Hen. 6. c. 9. "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made within the same county where such entry is made, to the justices of the peace, or to one of them, by the party grieved, that the justices or justice so warned, within a convenient time, shall cause, or one of them shall cause, the said statute to be duly executed, and that at the costs of the party so grieved."

Sec.

Stat. 10. And it is farther enacted by the said statute,
 " That though such persons making such entries be present,
 " or else departed before the coming of the said justices or
 " justice, notwithstanding the same justices or justice in
 " some good town next to the tenements so entered, or in
 " some other convenient place according to their discretion,
 " shall have, and either of them shall have, authority and
 " power to enquire by the people of the same county, as
 " well of them that make such forcible entries in lands and
 " tenements, as of them which the same hold with force.
 " And if it be found before any of them, that any doth
 " contrary to this statute, then the said justices, or justice
 " shall cause to reseize the lands and tenements so entered
 " or holden as afore, and shall put the party so put out, in
 " full possession of the same lands and tenements, so entered
 " or holden as before."

Stat. 11. And it is further enacted by the said statute,
 " That when the said justices or justice make such enquiries
 " as before, they shall make, or one of them shall make,
 " their warrants and precepts to be directed to the sheriff of
 " the same county, commanding him of the king's behalf,
 " to cause to come before them, and every of them, suf-
 " ficient and different persons, dwelling next about the
 " lands so entered as before, to enquire of such entries,
 " whereof every man which shall be impanelled to en-
 " quire into this behalf, shall have land or tenement of the
 " yearly value of forty shillings by the year, at the least,
 " above reprises, and that the sheriff return issues upon
 " every of them at the day of the first precept returnable,
 " twenty shillings, and at the second day forty shillings,
 " and at the third time an hundred shillings, and at every
 " day after the double. And if any sheriff or bailiff within
 " a franchise having return of the king's writ, be slack, and
 " make not execution duly of the said precepts to him di-
 " rected to make such enquiries, that he shall forfeit to the
 " king twenty pounds for every default, and moreover shall
 " make fine and ransom to the king. And that as well
 " the justices or justice aforesaid, as the justices of assize
 " shall have power to hear and determine such defaults of
 " the said sheriffs and bailiffs, at the suit of the king, or
 " of the party grieved, &c."

Stat. 12. And it is farther enacted by the said statute,
 " That mayors, justices or justice of peace, sheriffs and bai-
 " liffs of cities, towns, and boroughs, having franchise,
 " have in the said cities, towns and boroughs, like power
 " to remove such entries, and in other articles aforesaid,
 " rising within the same, as the justices of peace, and sheriffs
 " in counties and countries aforesaid have."

Stat. 13. But it is provided by the said statute, "That they who keep their possessions with force in any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued their possessions in the same by three years more, be not endamaged by force of this statute."

Stat. 14. And the said proviso was farther enforced and explained by 31. Eliz. c. 11. by which it is declared and enacted, "That no restitution upon any indictment of forcible entry, or holding with force, be made to any person, if the person so indicted hath had the occupation, or been in quiet possession, for the space of three whole years together, next before the day of such indictment found, and his estate therein not ended; which the party indicted may alledge for stay of restitution, and restitution to stay till that be tried, if the other will deny or traverse the same. And if the same allegation be tried against the same person so indicted, he is to pay such costs and damages to the other party, as shall be assessed by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied, as is usual for costs and damages contained in judgments upon other actions."

Stat. 15. In the construction of these statutes it was holden, that if a lessee for years, or copyholder be ousted, and the lessor, or lord, disseised, and such ouster, as well as disseisin, be found in an indictment of forcible entry, the Court may in their discretion award a restitution of possession to such lessee or copyholder; which was, by necessary consequence, a re-seisin of the freehold also, whether the lessor or lord had desired or opposed it. But it was a great question, whether a lessee for years, or a copyholder, being ousted by the lessor or lord, could have a restitution of their possession within the equity of 8 Hen. 6. the words whereof as to this purpose are, "that the justice shall re-seize the lands, &c." by which it seems to be implied, that the party must be ousted of such an estate therein, whereof he may be said to be seised, which must be a freehold at least.

Crom. 161,
166.

Yelv. 81.
Con. 1. Leon.
327.

Lamb. 155.
Crom. 71.
Dalt. c. 77.
Savil 68.
Farrell. 123.

Stat. 16. But to remove this doubt, it is enacted by 21. Jac. 1. c. 15. "That such judges, justices, or justice of the peace, as by reason of any act or acts of parliament then in force, were authorised and enabled upon enquiry to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements, which shall be entered upon with force, or from them withholden by force,

force, shall by reason of that act, have the like and the same authority and ability from thenceforth (upon indictment of such forcible entries, or forcible withholding before them duly found) to give like restitution of possession unto tenants for term of years, tenants by copy of court-roll, guardians by knight's-service, tenants by *elegit*, statute-merchant and staple, of lands or tenements, by them so holden, which shall be entered upon by force, or holden from them by force."

Latch. 182. **See** *Co. Lit.* 61. *Sett.* 17. But it hath been holden, that a tenant by the verge is not within this statute, because he is not within the express words, *sed quere*; for since such person hath no other evidence of his title but by the copy of court-roll, he seems at least to be within the meaning, if not within the words of the statute. However it seems clear, that if a lessor eject his lessee for years, and afterwards be forcibly put out of possession again by such lessee, he hath no remedy for a restitution by force, of any of the above-mentioned statutes, for he cannot have it by 8. Hen. 6. because he always continued seised of the freehold, and clearly he is not within 21. Jac. 1. c. 15.

Vide *Salk.* 587. **Crom.** 71. 166. **Dalt.** c. 77. *Lamb.* 155. *Crom.* 71. *Dalt.* c. 75. *a. Keb.* 495. *Sett.* 18. However there seems to be no doubt but that a justice of peace, &c. may, in either of the said cases, remove the force, and commit the offender, &c.

Strange 443. **794.** **Ld. Ray.** 1514. *Sett.* 19. HAVING thus set forth the several statutes relating to this subject, together with the mischiefs which occasioned them, and the several defects of each of them, I shall, for the better understanding of them all in general, proceed to examine the following particulars:

1. What shall be esteemed an entry within these statutes.
2. What entry is to be adjudged forcible.
3. What detainer shall be adjudged forcible.
4. In respect of what kind of possessions one may be guilty of such forcible entry or detainer.
5. What persons may be guilty thereof.
6. What ought to be the form of a record grounded upon these statutes.
7. Of what kind of possessions a restitution is to be awarded.

8. To whom such restitution ought to be made.

By whom, and in what manner, it is to be awarded and given.

10. In what cases it may be barred by the continuance of a possession for three years.

11. For what other causes it may be stayed.

12. How it may be superseded before it is executed.

13. How it may be set aside after it is executed.

AS TO THE FIRST POINT, viz. What shall be esteemed an entry within these statutes.

Secl. 20. It seems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church, or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto within the meaning of these statutes.

Crom. 73.
Dalt. c. 77.

Secl. 21. Yet in such case, if he make an actual claim with any circumstances of force or terror, he seems to be guilty of a forcible entry within 1. and 15 Rich 2. whether his adversary actually quit his possession or not.

Crom. 69.
Dalt. c. 77.
Con. C. Car.
486.
2. Com. Dig.
363.

Secl. 22. Also all those who accompany a man when he makes a forcible entry, shall be adjudged to enter with him, within the intent of these laws, whether they actually came upon the lands, or not.

Crom. 69.
Dalt. c. 77.
B.2. c. 29. f. 4.

Secl. 23. So also shall those who having an estate in land by a defeasible title, continue with force in the possession thereof, after a claim made by one who had a right of entry thereto.

Crom. 69.
Dalt. c. 77.
Co. Lit. 256

Secl. 24. But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within these statutes, because he no way concurred in or promoted the force.

Crom. 69
Dalt. c. 77
2. H. 7. 16.

As to THE SECOND POINT, *viz.* What entry is to be judged forcible.

Lamb. 40. &c.
Dalt. 77.
Co. L. 257.
Halc. 138.
1. Si. 101.
1. L. v. 90.

Sec. 25. It seems clear that it ought to be accompanied with some circumstances of actual violence or terror; and therefore that an entry which hath no other force than such as is implied by the law in every trespass whatsoever, is not within these statutes.

And therefore, for the better understanding hereof, I shall consider,

1. In respect of what acts of violence an entry may be adjudged forcible.

2. In respect of what circumstances of terror.

As to the first of these particulars, *viz.* In respect of what acts of violence an entry may be adjudged forcible.

Sum. 116. 138.
2. Roll. 2.
Noy 136, 137.
(a) See Rex. v.
Bathurst, 3.
Burr. 1732.
(b) See Rex. v.
Jobson, 3.
Burr. 1702.
notis.
30. Aff. 50.
11. H. 4. 16, 17.
2. Inf. 235,
236.
Dalt. c.
Crom. 70.
Moor 656.
Lamb. 143.

Sec. 26. It seems to be agreed, that an entry may be said to be forcible not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it at the same time or not, especially if it be a dwelling-house (a), and perhaps also by any act of outrage after the entry, as by carrying away the party's goods (b), &c. which being found in an *assise of novel disseisin*, will make the defendant a disseisor with force, and subject him to fine and imprisonment. And according to some opinions, an entry may be said to be forcible from the bare drawing up of a latch, or pulling back the bolt of a door; but surely such inconsiderable circumstances as these, which commonly pass between neighbour and neighbour, without any offence at all, can never bring a man within the meaning of these statutes, which speak of entries with strong hand, or multitude of people: and it hath been holden, that an entry into a house through a window, or by opening a door with a key, is not forcible. And it is said, that if one find a man out of his house, and forcibly withhold him from returning to it, and send persons to take peaceable possession thereof, in the party's absence, yet he is not guilty of a forcible entry, inasmuch as he did no violence to the house, but only to the person of the other. But perhaps this opinion may justly be questioned, because though the force be not actually done upon the land, nor in the very act of the entry, yet since it is used with an immediate intent to make such entry, and is the only cause it met with no opposition, surely it cannot be said that the entry is without force, which,

which, whether it be upon or off the land, seems equally within the statute.

As to the second particular, *viz.* In respect of what circumstances of terror an entry may be adjudged forcible.

Sett. 27. It is to be observed, that wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession of the tenements which he claims, just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror by carrying with him such an unusual number of servants, or by arming himself in such a manner, as plainly intimates a design to back his pretensions by force, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force against those who shall make any resistance; as if one say that he will keep his possession in spite of all men, &c.

Summary 128.
Lamb. 143. &c.
Dalt. c. 77.

10. H. 7. 12.
Crom. 69.

See the books
above cited.

Sett. 28. But it seemeth that no entry shall be judged forcible from any threatening to spoil another's goods, or to destroy his cattle, or to do him any other such like damage which is not personal.

B. Durefs 12.
16.
1. Inst. 253.
Dalt. c. 77.

Sett. 29. However it is clear, that it may be committed by a single person as well as by twenty.

Lamb. 143.

As to THE THIRD POINT, *viz.* What detainer is to be adjudged forcible.

Sett. 30. It seemeth certain, that the same circumstances of violence or terror, which will make an entry forcible, will make a detainer forcible also; from whence it seems to follow, that whoever keeps in his house an unusual number of people, or unusual weapons, or threatens to do some bodily hurt to the former possessor, if he dare return, shall be adjudged guilty of a forcible detainer, though no attempt be made to re-enter, and it hath been said, that he also shall come under the like construction, who places men at a distance from the house, in order to assault any one who shall attempt to make an entry into it; and that he also is in like manner guilty who shuts his doors against justice of peace coming to view the force, and obstinately refuses to let him come in: but it is said, that a man ought not to be adjudged guilty of this offence, for barely refusing to go out of a house, and continuing therein in despite of another.

Summary 138.
Lamb. 145.
Crom. 70. 73.
Summary 139.
Dalt. c. 77.
C. Jac. 199.

As to THE FOURTH POINT, viz. In respect of what kind of possessions one may be guilty of a forcible entry or detainer within those statutes.

(a) 1. *Id.* 101.

1. *L.* 90.

1. *K.* 438.

(b) 9. *Jac.* 41.

(c) *C. Car.* 201.

(d) 20. *H.* 6. 11.

22. *H.* 6. 33.

B. Force 7.

C. Car. 201.

(e) *C. Car.* 201.

(f) *C. Car.* 486.

Dalt. c. 77.

(g) *C. Jac.* 18.

(h) *Crem.* 69.

Lamb. 144.

Dalt. c. 77.

1. *Med.* 75.

2. *Keb.* 7-9.

Vide inf. f. 40.

Sec. 31. It seems clear, that one may come within the danger thereof by a force done to ecclesiastical possessions, as (a) churches, (b) vicarage-houses, &c. as much as if the same were done to any temporal inheritance. Also it hath been holden for a general rule, that one may be indicted for a forcible entry into any such incorporeal hereditament, for which a (c) writ of entry will lie, either by the common law, as for (d) rent, or by statute, as for (e) tythes, &c. But I do not find any good authority, that such an indictment will lie for a (f) common or (g) office; but it seems agreed, that an indictment of forcible detainer lies against any one, whether he be the terre-tenant or a stranger, who shall forcibly disturb the lawful (h) proprietor, in the enjoyment of any of the above-mentioned possessions; as by violently resisting a lord in his distress for a rent, or by menacing a commoner with bodily hurt, if he dare put in his beasts into the common, &c. Yet it seems clear, that no one can come within the danger of these statutes by a violence offered to another in respect of a way, or such like easement, which is no possession. Also it seemeth, that a man cannot be convicted upon view, by force of 15. *Rich.* 2. of a forcible detainer of any such tenement, wherein he cannot be said to have made a precedent forcible entry, because that statute gives the justices a jurisdiction of no other forcible detainer, but what follows a forcible entry.

As to THE FIFTH POINT, viz. Who may be guilty of a forcible entry or detainer within these statutes.

Sec. It seems clear, that no one can come within the intention thereof by any force whatsoever done by him in entering into a tenement, whereof he himself had the sole and lawful possession, both at and before the time of such entry; as by breaking open the door of his own dwelling-house, or of a castle, which is his own inheritance, but forcibly detained from him by one who claims the bare custody of it; or by forcibly entering into the land in the possession of his own lessee at will. *Sed quære.*

Sec. 33. But it seems clear, that a joint-tenant, or tenant in common, may offend against the purport of these statutes, either by forcibly ejecting, or forcibly holding out his companion; for though the entry of such a tenant be lawful *per my et per tout*, so that he cannot in any case be punished

Moor 784.

C. Jac. 18.

2. *Keb.* 495.

8. *Ed.* 4. 9. 19.

10. *H.* 7. 27.

King v Mar-

row, 9. *Geo.* 2.

8. *R. H.* 174.

punished in an action of trespass at the common law, yet the lawfulness of his entry no way excuses the violence, or lessens the injury done to his companion, and consequently an indictment of forcible entry into a moiety of a manor, &c. is good.

Larch. 224.
Palmer 419.

Sec. 34. Also if a man have been in possession of land for never so long a time, by a defeasible title, and another who hath a right of entry thereunto, make a claim, and yet such wrongful possessor still continue his occupation with force and arms, he is punishable for a forcible entry and detainer against the purport of these statutes, because all the estate whereof he was seised before such claim was wholly defeated by it, and his continuance in possession afterwards amounted in the judgment of law to a new entry.

Co. Lit. 256.
257.
Crom. 69.
Lamb. 160,
161.
Dalt. c. 77.

Sec. 35. It is said, that an *infant* or *feme covert* may be guilty within the intention of these statutes, in respect of such actual violence as shall be done by them in person, but not in respect of what shall be done by others at their command, because all such commands of theirs are void: also it is said, that a *feme covert* may be imprisoned for such offence, but that an *infant* ought not, because he shall not be subject to corporal punishment by force of the general words of any statute wherein he is not expressly named.

Dalt. c. 77.
Crom. 69.
Co. Lit. 357.

Hale
B. Imp. 45.

As to THE SIXTH POINT, *viz.* What ought to be the form of a record grounded upon these statutes: it hath been resolved,

Sec. 36. FIRST, That it is sufficient in the caption of such an indictment to say, that it was taken before *A. B.* and *C. D. justiciarius ad pacem domini regis conservandam assignatis*, without shewing that they had authority to hear and determine felonies and trespasses; for the statute enables all justices of peace, as such, to take such indictments.

Palmer 175
C. Jac. 633

Sec. 37. SECONDLY, It hath also been resolved, that the tenement in which the force was committed must be described with convenient certainty, for otherwise the defendant will neither know the special charge to which he is to make his defence, neither will the justices or sheriff know how to restore the injured party to his possession; and from hence it follows, that an indictment of a forcible entry into a (a) tenement (which may signify any thing whatsoever), (b) wherein a man may have an estate of freehold, or into a house (c) or tenement, or into two closes of meadow (d)

Dalt. c. 81.
3. Mod. 66.
12. Mod. 47.
3. Burr. 1732.
(a) Dalt. 15.
2. Roll. 46.
2. R. Abr. 80.
3. Leon. 102.
(b) Co. Lit. 6.
(c) 2. R. Abr. 40.
1. Roll. 334.
2. R. Abr. 81.

C. Jac. 633. Palmer 277. (d) or

(a) Bull. 207. or pasture, or into a rood (a) or half a rood of land, or into
 (b) Leon. (b) certain lands belonging to such a house, or into such a
 186. house, without shewing in what (c) town it lies, or into a
 3. Leon. 102. (d) tenement with the appurtenances called *Truepeny*, in D.
 B. Forc. Ent. is not good.
 23.
 (c) Leon. But it hath been resolved, that an indictment for a for-
 186. cible entry in (e) *domum mansionalem, sive messuagium, &c.* is
 (d) R. Abr. good, for these are words equipollent: also that such an
 89. indictment for an entry into a (f) close, called *Serjeant*
Vide Stra. 474. *Hern's close, &c.* without adding the number of acres, is
 (e) C. Jac. 633. good, for here is as much certainty as is required in an
 Palmer 277. ejectment. And it hath been adjudged, that such indict-
 (f) C. Eliz. 458. ment may be void as to such part thereof only which is un-
 2. R. Abr. 80. certain, and good for so much as is certain, and therefore
 2. Leon. 186. that an indictment for a forcible entry into a house, and
 3. Leon. 102. certain acres of land thereto belonging, may be quashed as
 to the land, and stand good as to the house.

St. 21. Jac. 1. *Sec. 38.* THIRDLY, It hath been also resolved, that an
 2. Keb. 495. indictment on 5. or 15. Rich. 2. needs not shew who had
 3. Bull. 71. the freehold at the time of the force, because those statutes
 1. Ven. 23. 25. seem equally to punish all force of this kind, without any
 1. Sid. 122. 306. way regarding what estate the party had on whom it was
 11. Mod. 273. made; yet it seems, that such an indictment ought to shew
 1. Ven. 89. that such entry was made on *the possession* of some person
 2. Keb. 495. who had some estate in the tenements, either as a freeholder
 Salk. 260. or lessee for years, &c. for otherwise it doth not appear that
 Sayer 142. 225. such entry was made injurious to any one. But it is said,
 Hetley 73. that an indictment on 8. Hen. 6. must shew, that the place
 Latch. 109. wherein the force was committed was the freehold of the
 2. Keb. 477. party grieved at the time of such force, and therefore, that
 499. it is not sufficient to say that the defendant with strong
 Lut. 1543. hand, &c. entered into such a house, *existens liberum tene-*
 1. Keb. 191. *mentum J. S. &c.* without saying, *adunc existens liberum tene-*
 C. Eliz. 754. *mentum J. S.* for otherwise it may be intended, that it was
 Noy 131. his freehold at the time of the indictment only, and not at
 2. Roll. 65. the time of the force, and according to the general opinion,
 1. Sid. 102. an indictment on that statute cannot warrant an award of
 Con. Yelv. 28. restitution, unless it find that the party was seized at the
 1. Bull. 177. time.
 Show. 272.
 Con. 1. Ven. 306.
 3. Leon. 102.
 Allen 46.
 Palmer 277.
 426.
 Con. 2. R. A. 80.
 Cro. Jac. 214.
 633. 939.

Yet it is said, that the want of such an express finding may be supplied by such words as necessarily imply, that the party was seized at the time of the force; as where it is expressly said that the defendant disseised J. S. &c. which is impossible, unless he had been seized of the freehold at the same time; and it hath been said, that it is sufficient in such an indictment to say that the party was *possessionatus pro termino vite*, without using the word *seisitus, &c.* for the same propriety

propriety of expression is not required in indictments as pleadings; *sed quere.*

Also it is said, that if it do appear either in such an express or implicit manner, that the party injured had the freehold of the land at the time of the force, it is not necessary to shew farther what estate in particular he had therein, or by what title he claims the same; for it is not *the title* but *the possession* which is in question.

And upon the like ground it hath been adjudged, that an indictment on the said statute for entering on my farmer, and forcibly expelling him, and disseising me, is good, without shewing what estate such farmer had; for it is sufficient to shew that he had *the possession*, and the injury complained of is the forcible disseisin done to me, which, being the main point of the indictment, if it be sufficiently set forth in substance, the indictment is good: yet in this very case the want of shewing that such farmer was ousted, would have been an incurable fault; because his possession being my possession, unless he were ousted, I could not be disseised. 2. R. Abr. 80.
Yelv. 165.

Also it hath been holden, that as an indictment on 8. Hen. 6. must shew that the party who is put out of possession was seised of a freehold, in order to bring him within the purview of that statute, so also an indictment on 21. Jac. 1. c. 15. must shew, that the party injured was possessed of such an estate as will bring him within the provision of that act; and upon this ground it hath been resolved, that such an indictment, setting forth in general, that the party was *possessed*, or that he was possessed *for a certain term*, without adding that it was *for years*, is not good: for in the first case it may be intended, that he was possessed only by virtue of a lease *at will*; and in the second, that he was possessed of a term *for life*; in neither of which cases, he is within the benefit of 21. Jac. 1. c. 15. Yet it hath been said, that the possession of such an estate as is within that statute, is sufficiently set forth in the reciting part of an indictment, as thus, *quod cum J. S. was possessed for a certain term of years*, and being so possessed, was by strong hand, &c. put out of possession, &c. without any direct allegation of such a possession. Farrell. 123.
1. Ven. 306.
1. Sid. 102.
1. Mod. 73.
2. Keb. 709.
Salk. 260.
Farrell. 123.
1. Mod. 73.

SECT. 39. FOURTHLY, It hath been resolved, that a repugnancy in setting forth the offence in an indictment upon any of these statutes, is an incurable fault; and upon this foundation it hath been adjudged, that an indictment on 8. Hen. 6. setting forth, that the defendants *pacifice intraverunt*,

Alcyn 50.
Shew 242.
1. Vent. 108.
Porham 205.
Raymond 67.
1. Keb. 423.
3. 435-472.

verunt, &c. et cum adtunc et ibidem vi et armis disseisuerunt, that *J. S.* was seised and possessed, is void. And it hath been adjudged, that an indictment on 21. Jac. 1. setting forth a disseisin of such a term of years, and that the defendant, by a strong hand ousted and disseised him, is void, because absurd and contradictory to set forth a disseisin of such an estate whereof it is impossible that any man can be disseised. Also it hath been holden, that an indictment on 8. Hen. 6. setting forth a disseisin of land, *adtunc et adhuc existens liberum tenementum J. S.* is void for its repugnancy, inasmuch as it implies, that *J. S.* always continued in possession, which, if it be true, makes it impossible that he could be disseised at all; but some have said that this seeming repugnancy may be reconciled, by intending that the disseisee might re-enter after the time of the disseisin, and before the finding of the indictment. However it seems clear, that if the words *adhuc extratenet* be added, such a repugnancy cannot be helped by any intendment; and that no restitution can be awarded on such an indictment, whether those words *adhuc extratenet* be in it or not, because the party grieved appears by the indictment itself to have had the freehold at the time of the finding thereof.

2. Roll. 311.
Shov 272.
2. Bulst 121.
1. Sid. 102.

2. R. Abr. 80.

Palm. 195, 196.
197.
C. Jac. 19, 20.
Yelv. 32.
C. El

B. R. Hill
1705.

Sec. 40. FIFTHLY, It hath been resolved, that an indictment of a forcible detainer, without shewing that the defendant made an entry into the same lands, is not good, because the statute doth not prohibit one who hath always been in possession, to maintain the same with force. And it seems clear, that a conviction of a forcible detainer upon view, by force of 15. Rich. 2. cannot be good, unless it shew that the defendant was also guilty of a forcible entry; for the words of that statute are, "that at all times that such forcible entries are made, and complaint thereof cometh to the justices, &c. that the same justices, &c. shall go, &c. and if they find any that hold such place forcibly, after such entry made, &c." by which it is plain, that the justices have no jurisdiction by force of this statute, but where the entry, as well as detainer, was forcible. Yet in *Leighton's case* it was resolved, that such a forcible entry is sufficiently set forth in the complaint recited in such conviction; and it is plain, that the statute could not intend that the forcible entry should be viewed, because it is to precede the proceedings of the justices: but perhaps it is the better opinion, that an indictment upon 8. Hen. 6. setting forth an entry and forcible detainer, without shewing whether the entry were forcible or peaceable, is good; for there is no medium between a forcible and peaceable entry; and an entry not alledged to have been forcible, shall be intended

to have been peaceable; or if not so, yet it seems to be no way material, whether it shall be taken to have been forcible or peaceable, because in either case it is equally with- in the statute, the words whereof as to this purpose are, "Where any doth make forcible entry in lands and tene- 2. R. Abr
ments, or other possessions, or them hold forcibly;" by which it appears, that a forcible detainer is a distinct of- fence from that of a forcible entry, and no way depending on it; and my lord chief justice HOLT seemed to be of this opinion in *Leighton's case* abovementioned. However it seems to be ~~settled~~, that if a bill both for a forcible entry and forcible detainer be preferred to a grand jury, and found *ignoramus* as to the entry with force, and *billa vera* as to the detainer, it will not warrant an award of restitution, but is void, because the grand jury cannot find a bill true for part, (a) and false for part, as a petit jury may. (a) Vide Rex v. Fieldhouse, Cowper 325.

SECT. 41. SIXTHLY, It hath been resolved, that no in- dictment can warrant an award of restitution, unless it find that the wrong-doer both ousted the party grieved, and also continueth his possession at the time of the finding of the indictment; for it is a repugnancy to award restitu- tion of possession to one who never was in possession, and it is vain to award it to one who doth not appear to have lost it. Salk. 260.
B. Force 13.
Lamb. 153.
Dalt. c. 81.
Summary 140.
Hard. Ca. 174.
Savil 68.
Strange 474.

SECT. 42. SEVENTHLY, It hath been resolved, that the time and place of the disseisin are sufficiently set forth in an indictment, alledging, that the defendant *tali die intravit, &c. et ipsum A. B. manu forti disseisivit*, without adding the words *ad eunc et ibidem*; for inasmuch as the entry and dis- C. Jac. 41. 151.
seisin are both of them of the same nature, and the one of them naturally tends to cause the other, it is implied, that they both happened at the same time; and the forcible entry being the principal offence within the purview of these statutes, and the disseisin being only added to shew that the party grieved hath a right to a restitution, as to which the day of the disseisin is no way material, it seemeth to be over-nice to require a precise exactness in setting it forth; neither can it be to any purpose to alledge that the disseisin was at the same place with the entry, since it appears from the nature of the thing that it could not but be so. Yet in an indictment of murder it is perhaps a fatal mistake, not expressly to shew the day and place of the stroke, as well as of the assault, because these offences are of different kinds, the one being only a trespass, and the other a felony, and may well be intended to have happened at different times and places; and the giving of the stroke being B. 2. c. 23. f. 38.
Dyer 68.

OF FORCIBLE ENTRIES Bk. 1.

being the principal offence, ought to be set forth with the most exact certainty.

3ayer 225.
(a) Noy 125.
(b) C. Jac. 32.
(c) C. Eliz. 86.
Lon. Noy 120.

Sec. 43. EIGHTHLY, It hath been resolved, that a disseisin is sufficiently set forth, by alledging, that the defendant entered, &c. into such a tenement and disseised the party, without adding either the words (a) *illicite*, or (b) *expulit*, (c) *inde*, for the word *disseisivit* implies as much.

11. Mod. 235.
C. Eliz. 461.
Litch. 224.
2. Bulf. 258.
B. 2. c. 25. f. 92.
Con. 1. Keb.
572.
2. Keb. 133.
135.
1. Vent. 265.
3. Burr. 1732.
3. Burr. 1699

Sec. 44. NINTHLY, It hath been resolved, that an indictment which pursues the words of the statute in alledging an entry, &c. to have been made *manu forti*, need not expressly also to say, that it was made *vi et armis*, because that is implied. Also it is said, that as the want of those words will not vitiate an indictment which pursues the statute, so neither will the using of them make good an indictment which does not pursue it; yet it hath been resolved, that such an indictment may be good without mentioning any complaint, though the statute seems to require it; for it is said, that those words in the statute are put in *causâ abundanti*; and that if a justice of peace have by any means whatsoever notice of a forcible entry or detainer, he may and ought to proceed against the same according to the said statute, as being a disturbance of the publick peace, the preservation whereof was the chief end of these statutes.

7. Ed. 4. 18.
Dalt. 25.

AS TO THE SEVENTH POINT, *viz.* Of what kind of possessions a restitution is to be awarded.

Dalt. c. 81.
Lamb. 153.

Co. Lit. 323.

See Cruise on
Fines 248.

Sec. 45. It seems, that it ought only to be awarded for the possession of such tenements as are visible and corporeal; for no one who hath a right to such as are invisible and incorporeal, as rents, commons, &c. can be put out of possession thereof, but only at his own election, by a fiction of law, in order to enable him to recover damages against the person who hath wrongfully disturbed him in the enjoyment of them; for such things being mere creatures of the law, and depending entirely upon the construction thereof, are always in the possession of those whom the law adjudges to have a right to such possession; and consequently all the remedy that can be desired against a force offered to a man in respect of such like possessions, is to have the actual force removed, and the offenders punished for the same, which may be done by the force of 15. Rich. 2. &c.

As to THE EIGHTH POINT, *viz.* To whom such restitution ought to be made.

Sec. 46. It hath been holden, that it shall only be given to him who is found by the indictment to have been put out of an actual possession, and consequently that it shall not be awarded to one who was only seised in law, as to an heir upon whom a stranger abateth upon the death of the ancestor, before any actual entry made by such heir; and from the same ground it followeth, that it shall not be granted to an heir upon an indictment, finding a forcible entry made upon his ancestor.

Dalt. c. 83.
Lamb. 153.

Lamb. 154.
Dalt. c. 83.
Vide C. Jac.
199.

Sec. 47. It hath been holden by some, that if a disseisee re-enter peaceably upon the disseisor, and continue for some time peaceably upon the tenements in dispute, and afterward detain them with force, the disseisor shall not be restored upon an indictment finding the said force, because his possession was at first peaceably defeated, and at the time of the force, he had, in the judgment of law, no possession at all. But I cannot be persuaded that this opinion is agreeable to the intention of the said statutes, the principal end whereof seems to be to oblige all persons to refer themselves to the courts of justice for the decision of their claims to the possession of land, and to restrain them from disturbing the public peace by such endeavours to right themselves; but if such a practice as this should be allowed, it would be easy to evade the effect thereof by refraining from violence at first, and then forcing the party to leave the possession of the premises after a short continuance thereon in peace; neither do I see any difference between such a continuance for the space of three days, and a continuance for three hours or minutes, inasmuch as the subsequent force is in each case equally within the mischief intended to be provided against by the statutes; and seeing the statutes of 8. Hen. 6. and 31. Eliz. c. 11. have expressly provided, that those who have been in possession for three years, shall not be put out of possession by an indictment of forcible entry or detainer, it seems plainly to be implied, that no one shall have the like advantage in respect of a possession for a shorter time.

Crom. 162,
163.

Sec. 48. It will be needless in this place to shew of what kind of hereditaments, or of what kind of estate therein, the party who is to be restored must be found to have been seised or possessed, because this may sufficiently appear by what hath been said in the foregoing part of this chapter.

As

As to THE NINTH POINT, viz. By whom and in what manner such restitution may be awarded and given.

Corlyns 61.
Dalt. c. 82.
Dyer 187.
14 Mod. 495.

Sect. 49. There is no doubt but that the same justice, before whom an indictment of forcible entry or detainer shall be found, may grant an award of restitution to the party; and it is said, that he may execute the same either in his own proper person, or make his precept to the sheriff to do it.

1. Sid. 156.
1. Keb. 88.
1. Ven. 308.
Dyer 187.
Dalt. c. 82.
Lamb. 184.
(2) Vide 3.
Com. Dig. 366.
where it is said
that a justice of
peace or sheriff
may break
open a house
to make restitu-
tion.

Sect. 50. But it seems clear, that neither justices of peace, nor any other court whatsoever, have authority to grant a restitution upon a conviction of any force taken by them upon view, unless the same be found by an indictment, according to the direction of 8. Hen. 6. c. 9. or 21. Jac. 1. c. 15. (2) Also it seems to be agreed, that no other justices of peace, except those before whom such an indictment shall be found, have any power, either at sessions or out of it, to make any award of restitution; and that no other court whatsoever can personally restore the party without a precept to the sheriff.

Keilw. 159.
Dalif. 25.
9. Co. 118.
11. Co. 65.

Sect. 51. Also it hath been resolved, that justices of *oyer* and *terminer* have no power, either to inquire of a forcible entry or detainer, or to award restitution on any such indictment; because when a new power is created by statute, and certain justices are assigned to execute it, it cannot regularly be executed by any other: and inasmuch as justices of *oyer* and *terminer* have a commission entirely distinct from that of justices of peace, they shall not from the general words of their commission, *ad inquirend' de omnibus transgr' et de omnibus aliis articulis et causis cont' formam quorumcunque statutorum fact' sive perpetrat'*, be construed to have any such powers as are specially limited to justices of peace.

Farrest. 139.
7. Ed. 4. 18.
4. H. 7. 18.
Dalt. c. 82.

Yet it hath been resolved, that the justices of the king's bench may award restitution upon an indictment of forcible entry or detainer removed before them, because the said justices having a supreme and sovereign jurisdiction over all matters of a criminal and publick nature, have always been esteemed to have power in all causes of this nature, being brought judicially before them, to give the parties such remedies in relation thereto, as they shall appear to have a right to demand, either by common law or by statute.

See Rex v.
Jones, Stra.
474.

Lamb. 157.
Dalt. c. 82.

Sect. 52. The sheriff, if need be, may raise the power of the county to assist him in the execution of a precept of restitution, and therefore, if he make a return thereto, that he

he could not make a restitution by reason of resistance, he shall be amerced.

As to THE TENTH POINT, *viz.* How such^r restitution should be barred by the continuance of a possession for three years.

Sec. 53. It appears from the abovementioned proviso of 8. Hen. 6. and also by 31. Eliz. c. 11. that any one indicted upon these statutes may alledge such possession to stay the award of restitution: in the construction whereof it hath been holden, that such possession must have continued without interruption during three whole years next before the indictment; and therefore that he, who having been in possession of land for three years or more, is forcibly ousted, and then restored by force of the statute of 8. Hen. 6. cannot justify a forcible detainer, till he have been in possession again for three years after such restitution: and also for the same reason it hath been said, that he who under a defeasible title hath been never so long in possession of land to which another hath a right of entry, cannot justify such a detainer at any time within three years after a claim made by him who hath such a right, because all defeasible estates in the land are wholly defeated by such a claim, and the subsequent continuance in possession amounted to a new entry.

Salkeld 260.
Carthew 496.
12. Mod. 268.
Farrell. 138.
Dalt. c. 79.
Crompton 71.
Summary 139.
Dyer 141.
22. H. 6. 18.
B. Force 22. 29.
1. Inst. 256.
Raymond 85.
1. Sid. 149.

Sec. 54. There have been some opinions that the three years possession must be of a lawful estate, and consequently that a disseisor's continuance in quiet possession for never so many years, shall not justify a forcible detainer; but it seems necessary to make a distinction between a detainer against him who has a right of entry, and a detainer against a stranger, or one who by his laches has lost his right of entry; for I do not see why three years continuance of a defeasible possession should not justify a detainer by force against a stranger, inasmuch as he cannot take advantage of another's right, and bare possession is a good title against all persons, except him who hath the right, and cannot be lawfully defeated by any other. Also, if one who has the mere right to lands, have so long neglected to recover the possession thereof, till in judgment of law he hath no more right to such possession, till he has recovered it by action, than a mere stranger, there doth not seem to be any reason that he should have more advantage against a forcible detainer, than if he were a mere stranger.

Dalt. c. 79.
22. H. 6. 18.
Crompton 71.
Holding over by force, where the tenant's title was under a lease then expired, is said to be a forcible detainer.
Cro. Jac. 199.

Comm. 149. Sect. 55. Also it hath been holden, that a peaceable continuance in possession for three years after a forcible entry, under any title whatsoever, will not justify a forcible detainer, inasmuch as the possession was at first gained by force. But I cannot think this a reasonable construction of the said statutes, for the force in the detainer being after three years quiet possession, seems justifiable by the express words of the statute; and where the force used in gaining a possession is afterwards wholly laid aside, there seems to be no colour to say, that it makes the subsequent possession less quiet or peaceable than it would have been, if there had been no force at all used at the first.

1. Keb. 538. R. v. Burges, Salkeld 261. Sect. 56. It seems clear from the express purview of the said statute of 31. Eliz. c. 11. that wherever the defendant pleadeth such a possession in bar of restitution upon such an indictment, either before the justices of peace, or in the king's bench, no restitution ought to be awarded till the truth of the plea be tried; and it hath been holden, that the plea of such a possession is good, without shewing under what title, or of what estate such possession was, because it is not *the title*, but *the possession* only, which is material in this case.

1. Sid. 149. Raym. 84. 1. Ven. 265.

4. Comm. 148. Sect. 57. It seems, that from the wording of 31. Eliz. c. 11. if one who has been in possession for three years, be ousted, and the same day re-enter with force, and also be indicted for such re-entry on the very same day, it may be questioned whether the prosecutor ought to have restitution, inasmuch as the words of the statute are, "that there shall be no restitution, &c. if the person indicted have been in quiet possession for three years next before the day of the indictment found;" and here the defendant hath been in possession three years before the day of the indictment, though not three years before the indictment, inasmuch as he was ousted the same day. But if it be considered, that the circumstance of finding the indictment on that day no way affects the merits of the case, or lessens the offence any more than if it were found on any other day, and that restitution must have been awarded if it had been found on another day, and that the mischief complained of in the preamble is, that persons were by colour of such indictments often turned out of their possessions which they had quietly enjoyed for three years next before such indictments found, which does not extend to the defendant in the present case, I rather incline to think, that restitution might be awarded to the prosecutor in this case; inasmuch as it clearly appears, that the defendant's possession hath not had

2. Burr. 119.

had three years uninterrupted continuance within the intent of the statute.

* As to THE ELEVENTH POINT, viz. For what other causes such restitution may be stayed.

Sec. 58. It seemeth to be settled at this day, that if the defendant tender a traverse of the force, which must be done in writing, and not by a bare denial of the force by parol, the justice ought not to make any restitution till the traverse be tried; in order whereunto he must award a *venue facias*, which on a jury must be returned, on whose verdict the award of restitution ought to depend.

1. Keb. 343.
2. Keb. 49, 571.
1. Sid. 284.
Salk. 587, 588.

Cases temp.
Hardwicke,
p. 175.

Sec. 59. It hath been resolved, that if such a jury find part of the indictment to be true, and part of it to be false, yet if they find so much thereof to be true as will warrant a restitution, the justice ought to restore the party: as where, on an indictment of forcible entry and forcible detainer, the jury find that the entry was peaceful, and the detainer was only forcible.

1. Sid. 97, 99.
1. Keb. 427.

Sec. 60. As the justice is bound to stay the award of restitution, upon the defendant's tendering a traverse of the force, so it hath also been said, that he ought not to make such an award in any case in the defendant's absence, without calling him to answer for himself; for it is implied by natural justice, in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself.

Savil 68.
Ayleyn 78.

As to THE TWELFTH POINT, viz. How such a restitution may be superseded before it is executed.

Sec. 61. There is no doubt but that the same justices, by whom a restitution is awarded upon an indictment of forcible entry or detainer found before them, may also afterwards, upon an insufficiency of the indictment appearing unto them, supersede the same before it is executed. And it hath also been said, that if such an indictment be taken, and restitution awarded by four or five justices, that two or even one of the same justices may supersede the execution thereof, as well as more or all of them. But it seems to be agreed, that no other justices, or other court whatsoever, hath such power, except the King's Bench.

Dyer 187.
Summary 140.
Crem. 165.
Dalt. c. 81. 84.

Cro. Eliz. 915.
Yelv. 32.

Sec. 62. However it is certain, that a *certiorari* from the King's Bench is a *superseas* to such restitution; for every such *certiorari* has these words, *coram nobis terminari volumus*

C. Eliz. 915.
Yelv. 32.
Moor 677.
1. Keb. 93.

et alibi; and consequently it wholly closes the hands of the justices of peace, and avoids any restitution which is executed after the *teste*, but does not bring the justices of the peace, &c. into a contempt, unless they proceed after the delivering thereof.

As to THE THIRTEENTH POINT, *viz.* How such restitution may be set aside after it is executed.

Sayer 176.

Sec. 63. It is certain, that the justices of the King's Bench, having in general a superintendent power over all the proceedings whatsoever of justices of peace, may set aside any such restitution, if it shall appear to them to have been either awarded or executed against law; as where the indictment whereon it was grounded, being removed before them, appears to be insufficient, and thereupon is quashed; or the defendant traverses the force and gets a verdict in the King's Bench; or wherever it sufficiently appears that the justices of peace have been irregular in their proceedings, as by refusing to try a traverse of force tendered by the defendant, &c.

Savil 68.

Sum. 140, 141.

C. Eliz. 31.

Sup. f. 58.

Noy 119.

Yelv. 99.

C. Jac. 148,

149.

Sec. 64. Yet if an indictment on these statutes be removed into the King's Bench, and the defendant having been turned out of possession by the grant of restitution to the prosecutor by the justices of peace, traverse the force in the King's Bench, and then the offence be pardoned by a general pardon, the Court cannot proceed on the trial, notwithstanding the defendant would waive the benefit of the pardon, because it appears judicially, that the king can have no benefit of a fine from the defendant if the verdict pass against him; and the Court will never falsify an indictment, which is found by the oaths of twelve men, by bare affidavits; and consequently in this case the defendant can have no remedy to set aside the restitution by controverting the truth of the indictment.

B. & C. 37. f. 61.

Raymond 85.

1. Keb. 343.

808.

2. Keb. 505.

Summary 141.

C. Eliz. 916.

Salk. 587.

Dyer 123.

2. Keb. 571.

Savil 68.

Sec. 65. Neither can a defendant in any case whatsoever, *ex rigore juris*, demand a restitution, either upon the quashing of the indictment, or a verdict for him on a traverse thereof, &c.; for the power of granting a restitution is vested in the King's Bench, only by an equitable construction of the general words of the statutes, and is not expressly given by those statutes; and is never made use of by that Court, but when upon consideration of the whole circumstances of the case, the defendant shall appear to have some right to the tenements, the possession whereof he lost by the restitution granted to the prosecutor.

Sec.

Stat. 66. The court of King's Bench hath been so favourable to one, who upon his traverse of an indictment upon these statutes being found for him, hath appeared to have been unjustly put out of his possession, that they have awarded him a re-restitution, notwithstanding it hath been shewn to the Court, that since the restitution granted upon the indictment, a stranger hath recovered the possession of the same land in the lord's court. C. 1111.
For the form
of the indictment vide 2.
Burn's Justice
210.

CHAPTER THE SIXTY-FIFTH.

OF RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.

IN treating of *Riots, Routs, and Unlawful Assemblies*, I shall consider,

FIRST, What shall be called a riot, rout, or unlawful assembly. 12. Mod. 510.

SECONDLY, How they may be suppressed and punished by the common law.

THIRDLY, How by statute.

Sect. 1. A RIOT seems to be a tumultuous disturbance of the peace, by three persons (*a*), or more, assembling together of their own authority, with an intent mutually to assist one another, against any who shall oppose them, in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful (*b*).

(*a*) Vide Ven. 251. Salk. 594, 595. Talt. c. 85, 86, 87. Crom. 61, &c. Pulton 25, &c. 3. Inst. 176. Summary 137. 3. Mod. 141. 509. (*b*) See Salk. 594. Popham 202. 1. Ld. Ray. 484. 12. Mod. 262. 196. 11. Mod. 113, 116, 117. 1. Black. 350.

For the better understanding whereof, I shall consider the following particulars :

1. How far such an assembly may become riotous through the want of legal authority expressed or implied, or be excusable by reason of such authority.
2. How far the intention with which the parties assemble together must be unlawful.
3. With what kind of violence or terror the intended enterprize must be executed.
4. How far the grievance intended to be redressed must be of a private nature.
5. Whether the unlawful execution of an act in its own nature lawful may not make an assembly riotous.

As

Ch. 65. OF RIOTS, ROUTS, &c.

As to THE FIRST POINT, *viz.* How far such an assembly may become riotous through the want of legal authority expressed or implied, or be excusable by reason of such authority.

Sec. 2. It seems, That wherever more than three persons (1) use force and violence in the execution of any design whatever wherein the law does not allow the use of such force, all who are concerned therein are rioters (A). But in some cases wherein the law authorizes force, it is not only lawful, but also commendable to make use of it; as for a (a) sheriff or (b) constable, or perhaps even for a private (c) person, to assemble a competent number of people in order with force to suppress rebels, or enemies, or rioters, and afterwards with such force actually to suppress them; or for a justice of peace, who has a just cause to fear a violent resistance, to raise the *posse*, in order to remove a force in making an entry into, or detaining of, lands. Also it seems to be the duty of a (d) sheriff, or other minister of justice, having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance; yet it is said not (e) to be lawful for them to raise a force for the execution of a civil process, unless they find a resistance; and it is certain, that they are highly punishable for using any needless outrage or violence therein.

Moor 656. *Infra* c. 47. f. 8. (d) 2. *Inst.* 193. (c) 3. *Inst.* 161. 2. *Inst.* 193. Hob, 2. 264.

(1) The words "more than three persons," are three times over (f. 2. 5. 7.) inserted instead of "three persons or more;" an instance, that in a variety of matter it is impossible for the mind of man to be always equally attentive.

4. Burn. 88. (A) Burr. 1262. K. v. Scott and Harris. 1. Black. 350. (a) 2. And. 67. Popham 121. (b) 3. H. 7. 10. (c) Pop. 121.

As to THE SECOND POINT, *viz.* How far the intention with which such persons assemble together must be unlawful.

Sec. 3. It seems agreed, that if a number of persons being met together at a fair, or market, or church-ale, or any other lawful or innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly without any previous intention concerning it. Yet it is said, that if persons innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot, because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for

Lamb. 179, &c. Dalt. c. 86. Crom. 61, 62. 6 Mod. 43. Skinner 118. Salkeld 596.

OF RIOTS, ROUTS, AND Bk. I.

that purpose from the time of such confederacy, as if their first coming together had been on such a design: however it seems clear, that if in an assembly of persons met together on any lawful occasion whatsoever, a sudden proposal should be started of going together in a body to pull down a house, or inclosure, or to do any other act of violence, to the disturbance of the public peace, and such motion be agreed to, and executed accordingly, the persons concerned cannot but be rioters, because their associating themselves together for such a new purpose is no way extenuated by their having met at first upon another. ~~Now~~ it seems to be

Vide *Rex v. John Royce*,
Burrow 2073.

6. Modern 43.

See the case of
Midwinter
and Syms,
Foster's Cro.
Law, 3. edit, 415; and the Coalheavers Case, Cases in Crown Law, 61.

certain, that if a person seeing others actually engaged in a riot, do join himself unto them, and assist them therein, he is as much a rioter as if he had at first assembled with them for the same purpose, inasmuch as he has no pretence that he came innocently into the company, but appears to have joined himself unto them, with an intention to second them in the execution of their unlawful enterprize; and it would be endless, as well as superfluous, to examine whether every particular person engaged in a riot, were in truth one of the first assembly, or actually had a previous knowledge of the design thereof.

AS TO THE THIRD POINT, *viz.* With what kind of violence or terror the intended enterprize must be executed.

Dalt. c. 85.
Lamb. 175.
3. Inst. 176.

SECT. 4. It hath been holden, that it ought to be accompanied with some offer of violence, either to the person of a man or to his possessions, as by beating him, or forcing him to quit the possession of his lands or goods, &c. And from hence it seems to follow, that persons riding together on the road with unusual weapons, or otherwise assembling together in such a manner as is apt to raise a terror in the people, without any offer of violence to any one in respect either of his person or possessions, are not properly guilty of a riot, but only of an unlawful assembly.

(a) Lamb. 178
Dalt. c. 871.
3. H. 7. 1.
6. Mod. 141.
2. Keb. 558.
Con. 1. Roll.
109.
3. Burr. 1267.
11. Mod. 116.
Lamb. 179.
11. Mod. 115.

SECT. 5. However it seems to be clearly agreed, that in every riot there must be some such circumstances either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people; as the show (a) of armour, threatening speeches, or turbulent gestures; for every such offence must be laid to be done *in terrorem populi* (2). And from hence it clearly follows, that assemblies at wakes, or other festival times, or meetings for exercise of common sports or diversions, as bull-baiting, wrestling, and such like, are not riotous. And

(2) Vide the opinion of Holt, C. J. in the case of the *Queen v. Soley* from

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from the same ground also it seems to follow, that it is possible for more than three persons (3) to assemble together, with an intention to execute a wrongful act, and also actually to perform their intended enterprize, without being rioters; as if a competent number of people assemble together, in order to carry off a piece of timber to which one of the company hath a pretended right, and afterwards do carry it away without any threatening words, or other circumstances of terror. And from the same ground it seems also to follow, that persons assembled together in a peaceful manner to do a thing prohibited by statute, as to celebrate masts, &c. and afterwards peacefully performing the thing intended, cannot be said to be rioters; for there seems to be no reason why an assembly should become riotous barely for doing a thing contrary to statute, any more than for doing a thing contrary to common law.

(3) It should be "three persons or more;" vide note (1) to section 2.

Pulton 25.
3. Keb. 578.
Hobart 91.

Lambard 178.
Crompton 62.
Square.

6. Mod. 141.
2. Keb. 558.
Con. 1. Mod. 13.
1. Ven. 369. 380.
11. Mod. 116.

As to THE FOURTH POINT, *viz.* How far the grievance intended to be redressed must be of a private nature.

Sect. 6. It seems agreed, that the injury or grievance complained of and intended to be revenged or remedied by such an assembly, must relate to some private quarrel only; as the inclosing of lands in which the inhabitants of a town claim a right of common, or gaining the possession of tenements the title whereof is in dispute, or such like matters relating to the interests or disputes of particular persons, no way concerning the public; for wherever the intention of such an assembly is to redress public grievances, as to pull down all inclosures in general, or to reform religion, or to remove evil counsellors from the king, &c. if they attempt with force to execute such their intentions, they are, in the eye of the law, guilty of levying war against the king, and consequently of high treason, as appears from chapter 17. section 25.

As to THE FIFTH POINT, *viz.* Whether the execution of an act in its own nature lawful, may make an assembly riotous.

Sect. 7. It hath been generally holden, that it is no way material whether the act intended to be done by such an assembly, be of itself lawful or unlawful; from whence it follows, that if more than three persons (4) assist a man to make a forcible entry into lands to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuisance, which may lawfully be done in a peaceful manner, they are as properly rioters, as if the act intended to be

Quere; and vide Salk. 594. 595.
Crom. 64. 66.
Dalton c. 87.

(4) It should be "three persons or more;" vide sect. 2.

3. *Modern* 3. done by them were never so unlawful; for the law will not
 11. *Mod.* 117. suffer persons to seek redress of their private grievances by
 2. *Show.* 236. such dangerous disturbances of the public peace. However,
 12. *Mod.* 648. the justice of the quarrel in which such an assembly doth
 engage, is certainly a great mitigation of the offence.

Lamb. 175,
 176.
 Crom. 61.
 Dalt. c. 85
 B. Riots, 4, 5.
 Pulton 25.

SECT. 8. A ROUT seems to be, according to the general opinion, a disturbance of the peace by persons assembling together with an intention to do a thing, which if it be executed, will make them rioters, and actually making a motion towards the execution thereof. But by some books the notion of a rout is confined to such assemblies only as are occasioned by some grievance common to all the company; as the inclosure of land in which they all claim a right of common, &c. However, inasmuch as it generally agrees with a riot as to all the rest of the abovementioned particulars requisite to constitute a riot, which have been already fully explained, except only in this, that it may be a compleat offence without the execution of the intended enterprize, it seems not to require any farther explication.

Crompton 61
 B. Riots, 4.
 Pulton 25.
 Dalt. c. 92.

SECT. 9. AN UNLAWFUL ASSEMBLY, according to the common opinion, is a disturbance of the peace by persons barely assembling together with an intention to do a thing which, if it were executed, would make them rioters, but neither actually executing it, nor making a motion toward the execution of it. But this seems to be much too narrow a definition. For any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the king's subjects, seems properly to be called an *unlawful assembly*; as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can force what may be the event of such an assembly.

Hobart 92.
 Salk. 504, 505.
 1. Ven. 369.
 380.

21. H. 7. 30.
 Lamb. 179, 180.
 Summary
 Crom. 64.
 B. Riots, 1.
 5. Co. 91.
 11. Mod. 116.

SECT. Also an assembly of a man's friends for the defence of his person against those who threaten to beat him, or to go to such a market, &c. is unlawful, for he who is afraid of such insults must provide for his safety by demanding the surety of the peace against the persons by whom he is threatened, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders, to the disturbance of the public peace. Yet an assembly of a man's friends in his own house, for the defence of the possession thereof, against those who threaten to make an unlawful entry thereinto, or for

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for the defence of his person against those who threaten to beat him therein, is indulged by law; for a man's house is looked upon as his castle.

SECONDLY, *viz.* How far offences of this nature may be suppressed and punished by the common law.

Sec. 11. It seems clear, that every sheriff, under-sheriff, and also every other peace-officer, as constables, &c. may and ought to do all that in them lies towards the suppressing of a riot, and may command all other persons whatsoever to assist them therein. Also it is certain that any private person may lawfully endeavour to appease all such disturbances by staying those whom he shall see engaged therein from executing their purpose, and also by stopping others whom he shall see coming to join them; for if private persons may do thus much, as it is most certain that they may, towards the suppressing of a common affray, surely *à fortiori* they may do it towards the suppressing of a riot. Also it hath been holden, that private persons may arm themselves in order to suppress a riot; from whence it seems clearly to follow, that they may also make use of arms in the suppressing of it, if there be a necessity for their so doing. However, it seems to be extremely hazardous for private persons to proceed to those extremities; and it seems no way safe for them to go so far in common cases, lest, under the pretence of keeping the peace, they cause a more enormous breach of it; and therefore such violent methods seem only proper against such riots as favour of rebellion, for the suppressing whereof no remedies can be too sharp or severe.

Popham 121.
3. H. 7. 1. 10.

Popham 121.
Kelynge 76.

However, it is enacted by 1. Geo. 1. c. 5. "That if more persons than twelve being unlawfully, riotously, and tumultuously assembled, twelve or more of them shall continue together, and not disperse themselves within one hour after proclamation made in pursuance of that statute, that then every peace-officer of the place where such assembly shall be, and all persons who shall be commanded to be assisting to such officer, may and ought to apprehend all such rioters, and carry them before some justice of peace; and that if any such rioter shall happen to be killed, maimed, or hurt by reason of their resisting such officer, &c. the officer shall be discharged, &c." But the statute being wholly in the affirmative, cannot be thought to take away any part of the authority in the suppressing of a riot, which was before that time given either to officers or private persons by the common law or by statute.

A person present aiding and abetting rioters is a principal in the second degree, under this act of parliament.
4. Burr. 2073.

Vide Douglas, p. 700. n. (1)
(2)

Stat. 12. Generally, offences of this nature are punished at the common law as trespasses, by fine and imprisonment only; yet sometimes, where they have been very enormous, they have been punished with the pillory; and anciently, if they were undertaken in contempt of the king's express prohibition of their meeting, under pain of forfeiture of lands, &c. they seem to have been punishable with such forfeiture.

Stat. 13. It hath been holden, that the persons of whom a corporation consists, being guilty of a riot, are punishable in their natural, but not in their politic capacity; for the corporation itself cannot be in fault, because it is invisible, and exists only in supposition of law. Yet there are some precedents by which it appears, that corporations have been amerced (5), and their liberties seized into the king's hands, for suffering a dangerous riot to happen within their jurisdiction without using their endeavours to suppress it.

Stat. 14. Women are punishable as rioters, but infants under the age of discretion are not.

THIRDLY, *viz.* How far offences of this nature may be suppressed and punished by statute. I shall consider,

1. How far they may be suppressed and punished by one justice of peace.

2. And, how far by two or more.

As to THE FIRST of these points, *viz.* How far they may be suppressed and punished by one justice of peace.

Stat. 15. It is enacted by 34. Edw. 3. c. 1. "That justices of peace shall have power to restrain offenders, rioters, and all barrators, and to pursue, arrest, take and chastise them according to their trespass and offence; and to cause them to be imprisoned and duly punished, &c."

Stat. 16. And this statute has been liberally construed for the advancement of justice, for it hath been resolved, that if a justice of peace find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail, but that he may also authorise others to arrest them by a bare patrol command without other warrant, and that by force thereof the persons so commanded may pursue and arrest the offenders in his absence as well as presence. It is also said, that if a justice of peace be sick, and hear that persons are riotously assembled, he may send his servants to arrest

Crompton 61.
Dalt. c. 46.
C. Car. 507.
2. R. Abr. 208.

21. Ed. 4. 13, 14.
Dalt. c. 88.
C. Car. 252.
2. Hale 155.

(5) Vide the
King v. Ken-
net, Ld. May-
or of London,
during the ri-
ots in the year
1780.

14 H.
Lamb. 181, &c.

Dalt. c. 46.
B. Peace, 7.

Fulton 28.
Crom. 62, 63,
64, 65. 195.
Kellway 41.

arrest them and bring them before him; and that if he hear that persons are riotously together in a certain place, and go thither and find none there, he may leave his servants behind him with a command to arrest them when they shall come. Also it is said, that after a riot is over, any one justice of peace may send his warrant to arrest any person who was concerned in it; and also that he may send him to gaol, till he shall find sureties for his good behaviour.

Sec. 17. But it seems to be agreed, that no one (a) justice of the peace hath any power by force of this statute, either to record a riot upon his own view, or to take an inquisition thereof after it is over. Also if one justice of peace, proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself, because no single justice of peace is by this statute made a judge of the said offence. (b) But if a riot shall be committed by persons armed in an unusual manner, contrary to the *statute of Northampton*, and any one justice of peace acting *ex officio*, in pursuance of the said statute, seize the armour and imprison the offender, and make a record of the whole matter, such a record cannot be traversed, because it is made by one acting in a judicial capacity, as appears more at large in the chapter of Affrays: and for the same reason, if a justice of peace proceeding on the statute of 15. Rich. 2. against forcible entries and detainers, shall, upon his own view, record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed, as hath been shewn in the foregoing chapter. Also if a justice of peace acting as a judge, by virtue of any statute whatsoever empowering him so to do, make a record upon his view of a riot committed in his presence, such record shall not be traversed; for the law gives such an uncontrollable credit to all matters of record, made by any judge of record as such, that it will never admit of an averment against the truth thereof.

Sec. 18. It hath been questioned, whether a justice of peace be authorized by virtue of the abovementioned statute of 34. Edw. 3. c. 1. to raise the power of the county to suppress a riot; but it seemeth, that by being made a conservator of the peace, he hath, by an implication of law, all such powers in relation thereto, as are incident to the office of a conservator of the peace by the common law; and consequently, that he hath a right of demanding the assistance of others to enable him to preserve the peace, in the same manner as every sheriff and constable are empowered to demand

(a) B. Peace, 7.
Keilw. 41.
Lamb. 181, &c.
Pulton 26.
Summary 137.
Crom. 61. 63.
65.
Dalt. c. 46.
Con. B. Judges
10.
(b) 8. Co. 121.
Dalt. c. 22, 23.

Crompton 64.
Lambard 317.
Vide inf. § 25.

Pult. 25, 26.
Lambard 314.
Crompton 62.

H. 7. 10.
3. Inst. 158.
Vide supra.

mand such assistance by the common law. However, there seems to be no reason to doubt, but that every justice of peace is authorized by the statute of 17. Rich. 2. c. 8. to raise the power of the county to repress a riot; for by the said statute it is enacted, "That as soon as the sheriffs, and other the king's ministers," under which words all justices of peace clearly to be included, "shall hear of a riot, rout, or other assembly against the peace, they with the power of the county where such case shall happen, shall disturb such malice with all their power, and shall apprehend all such offenders, and put them in prison, until due execution of the law be made of them; and that the lords and other liege people of the realm shall attend, with their whole strength and power, the sheriffs and ministers aforesaid."

AS TO THE SECOND POINT, *viz.* How far offences of this nature may be suppressed and punished by two or more justices of peace.

Sec. 19. It is enacted by 13. Hen. 4. c. 7. "That if any riot, assembly, or rout of people against the law, be made in parties of the realm, the justices of peace, three or two of them at the least, and the sheriff or under-sheriff of the county where such riot, assembly, or rout shall be made hereafter, shall come with the power of the county (if need be) to arrest them; and shall arrest them; and the same justices and sheriff, or under-sheriff, shall have power to record that which they shall find so done in their presence against the law. And that by the record of the same justices and sheriff, or under-sheriff, such trespassers and offenders shall be convict in the manner and form as is contained in the statute of Forcible Entries."

Sec. 20. In the construction of this statute, compared with the above mentioned statute of 17. Rich. 2. c. 8. and also with the statute of 2. Hen. 5. c. 8. it hath been holden, that all persons whatsoever, and even noblemen, and all others of what condition or degree soever they may be, except women, clergymen, persons decrepit, and infants under the age of fifteen years, are bound, under pain of fine and imprisonment, upon reasonable warning, to attend the justices and sheriffs in the execution of the said statute, and not only to arrest the rioters, but also to conduct them to prison.

Sec. 21. Also it hath been holden, that those who attend the justices in order to suppress a riot, may take with them such weapons as shall be necessary to enable them effectually to do it, and that they may justify the beating, wounding, and even the killing of such rioters as shall resist, or refuse to surrender themselves.

Pop. 120, 121.
Crompton 62.
Dalton c. 46.
Lambard 316.

Sec. 22. It is said, that the justices of peace are not only impowered by the said statute to raise the power of the county to assist them in suppressing a riot which shall happen within their own view or hearing, but also, that they may safely do it upon a credible information given them of a notorious riot happening at a distance, whether there were any such riot in truth or not; for it may be dangerous for them to stay till they can get certain information of the fact: but they seem to be punishable for alarming the country in this manner, without some such probable ground of their proceeding as would induce a reasonable man to think it necessary and convenient.

Lambard 315,
316. 318, 319.
Dalt. c. 46.
Pulton 29.
Crom. 64.

Sec. 23. It seems clear from the said statute, that if the justices, &c. in going towards the place where they have heard that there is a riot, shall meet persons coming from thence riotously arrayed, they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof, &c. for the statute extends to all other unlawful assemblies whatsoever, as well as to riots.

Dalt. c. 46.
Lamb. 316.
Crom. 63.

Sec. 24. Also it seems clear, that after the justices have had a view of a riot they may make a record thereof, whether the offenders be in custody at the same time, or have escaped; and it is said that the justices may lawfully, upon a fresh pursuit, arrest such of the offenders as shall have escaped, but that they cannot at another time award any process on such a record, and therefore that they ought to send it into the King's Bench, if any of the offenders escape from a fresh pursuit, and that process shall issue against them from thence: however, there seems to be no doubt, but that any of the same justices who have recorded a riot, or any other, justice of peace, may, at any time, by virtue of the abovementioned statute of 34. Edw. 3. c. 1. arrest those who have been notoriously guilty of a riot, in order to compel them to find sureties for their good behaviour.

Lamb. 318.
Dalt. c. 46.
Pulton 29.
8. Co. 121.

Vide inf. f. 29.
Vide sup. 15,
16.

Sec. 25. It seemeth to be certain, that the record of a riot expressly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great

Raymond 386.
Crom. 63.
Dalton c. 46.

Pulton 29.
Lamb. 316,
317.

great authority, that it can no way be traversed, however little ground in truth there might be to affirm that any riot at all was committed, or however innocent the parties may be of the fact recorded against them. And it is said, that if any one be bound by recognizance to keep the peace, and, on a *seire facias* thereon, such a record of a riot be produced against him, he shall not only be concluded thereby from pleading the general issue, but also from pleading any matter of justification whatsoever.

Lambard 317.
Dalton c. 130.

Sec. 26. However it seemeth clear, that if in such a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or rescous, the party shall be concluded thereby as to the riot only, and not as to any of the other matters, because the justices of peace have by this statute, a judicial authority over no other offences except riots, routs, and unlawful assemblies.

Lambard 316.
Dalton c. 46.

Sec. 27. And inasmuch as such a record is a final conviction of the parties as to all such matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact; for since the parties are concluded from denying the truth of such a record, and have no other remedy to defend themselves against it, but only by taking advantage of the insufficiency of what is contained in it, they may justly demand the benefit of excepting to it, if it do not expressly shew both that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power given them by the said statute; and from the same ground it seems also to follow, that such a record may be excepted against, if it do not appear to have been made by the sheriff or under-sheriff in concurrence with the justices.

Lambard 319.
Raymond 386.
Cen. Dal. c. 46.

Lambard 317.
Dalton c. 46.

Sec. 28. It is said, that the offenders being under the arrest of the said justices, and also convicted by a record of their offence, ought immediately to be committed to gaol by the same justices, till they shall make fine and ransom to the king, which can be assessed by no other justices of peace except those by whom the record of the offence was made; and by 2. Hen. 5. c. 8. such fine ought to be larger than it was wont to be before that statute, for the support of the charges of the said justices, &c. whereof payment ought to be made by the sheriff, by indenture thereof between him and them.

Stat. 29. It is farther enacted by the said statute of 13. Hen. 4. c. 7. that if it shall happen, "that such trespassers and offenders be departed before the coming of the said justices and sheriff, and under-sheriff, that the same justices, three or two of them shall diligently inquire, within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land."

Stat. 30. Also it is farther enacted by 19. Hen. 7. c. 13. "That the sheriff having a precept directed to him to return a jury in pursuance of 13. Hen. 4. c. 7. shall return twenty-four persons dwelling within the shire where such riot, rout, or unlawful assembly shall be so committed and done, whereof every of them shall have lands and tenements within the same shire, to the yearly value of twenty shillings of charter-land or freehold, or twenty-six shillings and eight-pence of copyhold, or of both, over and above all charges, for to enquire of the said riot, rout, or unlawful assembly. And that he shall return upon every person so by him impanelled, in issues at the first day twenty shillings, and at the second day forty shillings, if they appear not, and be sworn to inquire of the premises at the first day. And that the sheriff for every default, &c. shall forfeit twenty pounds, &c."

Stat. 31. It is not clearly settled, whether the month, within which the justices of peace are confined to take their inquiry by force of these statutes, must be reckoned according to the computation of a lunar or solar month. However it seems to be agreed, that if the justices give their charge to the jury, and it is said, that if they do but award a precept for the returning of the jury within a lunar month, they may take the verdict afterwards; for the cause being regularly attached in them within the time prescribed by the statute, shall be prosecuted as all other cases ought, with such convenient dispatch as to the judges thereof shall seem proper; and the statute, by obliging the justices to make so speedy an inquiry, meant not to hurry them in the execution of it.

1. Sid. 186.
1. Keb. 645.
Vide supra.
Lamb. 322.
Dalton c. 46.
Pulton 29.
6. Mod. 141
Salkeld 592

Stat. 32. It is generally said, that any justice of the county may take such an inquiry, whether they dwell near the place where the riot happened or at a distance, or whether they went to view the riot or not; for the statute ought to be construed as largely as the words will bear, in favour of the justices power in the suppressing of such riots; and therefore those words in the statute, "that the same justices, &c. shall enquire," ought to be thus expounded, that the same

Lamb. 322.
327.
Dalton c. 46
Pulton 20.
Crompt. 616
seems contrary.

See Sect. 44.

same justices who were before impowered to raise the *posse*, &c. shall inquire; and it is clear, that any justices in the county are within that part of the statute which gives that power; neither is it any way reasonable to construe the last clause of the said statute, whereby the justices who dwell nighest, are bound to execute the statute under pain of one hundred pounds, in such a manner as to restrain the jurisdiction of those who, by the foregoing part of the said statute, are authorised to execute it; for if such an exposition should prevail, the negligence of the justices who happen to dwell nighest would make the statute wholly ineffectual.

Lambard 321. *Sect. 33.* It seems clear from the wording of the above-mentioned clause, that the sheriff ought not to join with the justices in taking of such an inquiry, as he ought to do in making a record of a riot upon view.
Raymond 386.
Salkeld 593.
Carthew 383.

Sect. 34. Also it seems clear from these words in the statute of 13. Hen. 4. c. 7. "that the same justices shall hear and determine, &c." that they may award process under their own *teste*, against those who shall be indicted before them of any of the offences abovementioned, according to the form of the said statute; and also that they may award the like process for the trial of a traverse of such an inquisition, and do all other things in relation therunto, which are of course incident to all courts of record.
Lamb. 323.
328.
Dalt. c. 46. and
c. 132.
Pulton 26.
Crompton 67.

Sect. 35. But it hath been questioned, whether the justices can safely dismiss the offenders upon their paying such a fine as shall be imposed upon them, without some judgment for their imprisonment as well as fine, inasmuch as the statute of 2. Hen. 5. c. 8. is express, "that all rioters attainted of great and heinous riots shall have one whole year's imprisonment at the least, without bail, &c." and "that rioters attainted of petit riot, shall have imprisonment, as best shall seem to the king or to his council."
Dalt. c. 46.
Crompton 61.

Sect. 36. Formerly, if the fine imposed upon riots by justices of peace had been too favourable, it was a common practice for the court of Starchamber afterwards to impose such other fine as might, together with that which was assessed by the justices of peace, be proportionable to the heinousness of the offence; and this was said not to be a double punishment for the same offence, but only an award of due penalty at several times.
Crompton 63.
Pulton 24.
Dalton c. 46.
See 1. Leon.
382.

Sect. 37. It is farther enacted by the said statute of 13. Hen. 4. c. 7. "That if the truth cannot be found in the
man-

"manner as is aforesaid, then within a month then next following, the justices, three, or two of them, and the sheriff, or under-sheriff, shall certify before the king and his council all the deeds and the circumstances thereof; which certificate, shall be of like force as the presentment of twelve men: upon which certificate the said trespassers and offenders shall be put to answer, and they which shall be found guilty, shall be punished according to the discretion of the king and his council. And if such trespassers and offenders do traverse the matter so certified, the same certificate and traverse shall be sent into the king's bench, there to be tried and determined, as the law requireth; and if they appear not before the king and his council, or in the king's bench, upon such process and proclamation for their appearance as are required by the said statute, they shall be attainted of the riot, &c."

Stat. 38. And it is further enacted by 19. Hen. 7. c. 13. "That if a riot, &c. be not found by the jury by reason of any maintenance or embracery of the jurors, then the same justices, &c. over and above such certificate which they must and are bound to make by the said statute of 13. Hen. 4. c. 7. shall in the same certificate certify the names and misdemeanors of such maintainers, &c. on pain that every of the said justices, &c. shall forfeit twenty pounds, if they have no reasonable excuse for not certifying the same; which certificate so made shall be of like force as if the matter were found by verdict of twelve men; and every person duly proved to be such a maintainer, &c. shall forfeit twenty pounds, &c."

Stat. 39. In the construction of these statutes it hath been holden, that the certificate required by the abovementioned statutes may be made, either by the justices, &c. who went to see the riot, or by those who took the inquiry; but it seems to be most proper, that wherever such an inquiry is taken, such certificate should be made by such justices who made the inquiry, because they, having had the examination of the fact, must needs be best able to judge of the circumstances thereof, and in that respect are the most proper persons to supply the defects of the inquiry. However, the said statute of 19. Hen. 7. c. 13. which is grafted on 13. Hen. 4. c. 7. seems clearly to imply, that some justices are bound in a more especial manner to make such certificate than any others, by imposing the penalty of twenty pounds on those who neglected to make it as they are bound by 13. Hen. 4. c. 7. which part of the statute seems to be most reasonably applied to those justices who

Lamb. 323.

326.

Pulton 29.

Dalton c. 46.

took the inquiry; or, in case that no inquiry was taken, to those justices who endeavoured to take one, but by the fault of others were hindered from taking it; for there was no need of such an additional penalty on the neighbouring justices who were bound before to do their duty in executing 13. Hen. 4. c. 7. under pain of forfeiting one hundred pounds, as will be shewn section forty-four, &c.

Pulton 29.
Lambard 324
Dalton c. 46.

Seft. 40. Also it is generally said, that such a certificate must be made within a month after the inquiry. And this seems to be a very reasonable construction where an inquiry has actually been made; but it may happen that no inquiry at all may be taken, either through the default of the sheriff in not returning a jury, or the obstinacy of the jurors in refusing to appear, or the rebellious humour of the people in not suffering the justices to do their duty; in all which cases a certificate seems to be required, both by the intent and letter of the statute, the words whereof, as to this purpose, are, "If the truth cannot be found in the manner as is aforesaid, then within a month then next following, the justices, &c. shall certify, &c." And therefore in these cases it seems proper to make a certificate of the obstructions which prevented the taking of such an inquiry, within a month after they happen.

Lambard 324.
C. Crompton 63.
Dalton c. 46. &
107.
B. Præm. 1.

Seft. 41. It seemeth clear from the plain words of the statute, that the certificate ought to be made to the privy council board, which is clearly distinguished both from the chancery, and also from the king's bench, which in some statutes relating to judicial proceedings are taken for the king's council.

Pulton 29.
Crompton 63.
Lamb. 325,
326.
Dalton c. 46.

Seft. 42. It is said, that if there be variance between the inquisition and the certificate, that shall be taken which is most for the king's advantage; and therefore if the inquisition be of a riot by ten persons, and the certificate be of a riot by twenty, or by ten in harness, or of a battery joined with a riot, that the certificate shall be preferred, because the fine to the king shall be greater; but if they differ only as to the time, it is said that the inquisition shall be preferred.

Dalton c. 46..
& c. 130.
Lamb. 321,
322.

Seft. 43. Also it seemeth certain, that such a certificate, being in the nature of an indictment at common law, ought to comprehend the certainty of time, place, and persons, and other material circumstances, both of the riots and maintenance, &c. but perhaps it need not express the additions of the offenders.

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Stat. 44. It is farther enacted by the said statute of 13 Hen. 4. c. 7. "That the justices of peace dwelling nextest in every county where such riot, assembly, or rout of people shall be made hereafter, together with the sheriff or under-sheriff of the same county, and also the justices of assizes, for the time that they shall be there in their session, in case that any such riot, assembly, or rout be made in their presence, shall do execution of this statute, every one upon pain of one hundred pounds, to be paid to the king as often as they shall be found in default of the execution of the same statute."

In the construction of this clause the following opinions have been holden :

Stat. 45. FIRST, That no justice of peace is in danger of incurring the penalty thereof, unless he dwell in the county wherein a riot happens. Lambard 236.
Crompton 63.
Dalton c. 46.

Stat. 46. SECONDLY, That if any justices of peace, who do not dwell nearest to the place, do actually execute the statute, they excuse all the rest. Dalton c. 46.
Lambard 326.
Crompton 63.

Stat. 47. THIRDLY, That if the justices whose dwelling was nearest at the time of the riot, or one of them, happen to die within the month, those whose dwelling is thereby become the nearest, are bound to execute the statute in the same manner as the others were. Pulton 30.
Crompton 62.

Stat. 48. FOURTHLY, That notwithstanding those justices only, who dwell nearest, are liable to the penalty of the statute, yet if any others on notice neglect to supply their default, they are finable at discretion. Lambard 327.
Dalton c. 46.
Pulton 30.

Stat. 49. FIFTHLY, That if the two justices, or one of them, do their duty in executing, or endeavouring to execute the statute, they shall not incur any penalty through a default of the sheriff, &c. either in refusing to appeal, or to return a jury, &c. Crompton 63.
Lambard 327.
Dalton c. 46.
Pulton 30.

Stat. 50. SIXTHLY, That the said justices, &c. shall not avoid the penalty by executing the statute in part only, as by recording a riot without committing the parties. Crompton 61.

Stat. 51. SEVENTHLY, That no justice, &c. is subject to the penalty of the said statute on account of a petit riot, but only of such riots as are notorious, and in the nature of insurrections and rebellions. Dalton. c. 46.

Sect. 52. EIGHTHLY, That if a justice of peace, &c. had no express notice given him of the riot, he shall be excused, unless it were so very flagrant that by common intentment every one dwelling near it could not but have notice thereof.

Sect. 53. NINTHLY, That the acquiescence or agreement of the parties aggrieved is no excuse to the justices, because they ought, *ex officio*, to make the enquiry, and make proclamation whether any will give evidence for the king, &c. and may bind such of the parties grieved as shall refuse to prosecute their complaint, to their good behaviour.

Sect. 54. Also it is farther enacted by 2. Hen. 5. c. 8. "That upon any default of the said justices, &c. touching the execution of 13. Hen. 4. a commission shall be awarded at the instance of the party grieved, to enquire as well of the truth of the case as of the default of the said justices, &c. and that the said commissioners shall presently return into *chancery* the inquests before them taken, and that the jurors, who shall make inquiry, shall be worth 10l. *per annum*, and shall be returned by the coroners, if the sheriff, supposed to be in default, continue in his office, &c." See the statute.

Sect. 55. And it is farther enacted by 2. Hen. 5. c. 9. and 8. Hen. 6. c. 14. "That THE LORD CHANCELLOR, upon complaint made to him that a dangerous rioter is fled into places unknown, and also upon a suggestion under the seals of two justices of peace and the sheriff, that the common fame and voice runneth in the county of the riot, may award a *capias* against the party, returnable in *chancery*, upon a certain day, &c. and afterwards a *writ of proclamation* returnable in the king's bench, &c.

Sect. 56. But all the penalties of the above-mentioned statutes having been found by experience not to be sufficient to restrain the rage of the populace from breaking out into dangerous tumults, whenever they happen to be persuaded that they lie under any real or pretended grievance, it was thought necessary to make a farther provision against such insolent disturbances of the peace, by more severe laws; and to this end it was enacted, by the RIOT ACT 1. Geo. 1.

4. Burr. 2173 c. 5. "That if any persons, to the number of twelve, (5)

(5) It is not perfectly clear from the penning of the act, whether it is necessary that there should be twelve or more rioters in order to entitle the party injured to his action against the punished. (Vide *sect. 59.*) But, according to the most obvious construction, that number is not necessary to constitute the felony created by section 4. Douglas 70. And in the case of *Pritchard v. Waldron*, 5. Term Rep. 14. it is said to have been solemnly determined in the case of the rioters in the year 1783, that it is not necessary that twelve persons should be assembled to constitute a capital crime on the 4th clause of this statute.

"or

"or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any justice of peace, sheriff of the county, or under-sheriff, or by the mayor, bailiff, or bailiffs, or other head-officer or justice of the peace of any city, or town corporate, where such assembly shall be, by proclamation to be made in the king's name immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, under the pains of the said statute, shall afterwards unlawfully, riotously, and tumultuously continue together by the space of one hour after such proclamation made, or after a wilful let or hindrance of a justice of peace, &c. from making the same proclamation, shall be adjudged felons without benefit of clergy, &c."

Sec. 57. And it is further enacted by the said statute, "That if any person or persons shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt any person, &c. who shall begin to proclaim, or go to proclaim, according to the proclamation appointed by the said statute, whereby such proclamation shall not be made, they shall be adjudged felons without benefit of clergy."

Sec. 58. And it is farther enacted by the said statute, "That if any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down any church or chapel, or any building for religious worship, certified and registered according to 1. Will. and Mary, c. 18." N.B. Vide the trials of the rioters in the year 1780. which is commonly called THE TOLERATION ACT, "or any dwelling-house, barn, stable, or other out-house, they shall be adjudged felons without the benefit of clergy."

Sec. 59. And it is further enacted by the said statute, "That whenever any such church, &c. shall be demolished, &c. by any such rioters, &c. the inhabitants of the town or hundred wherein the riot happened, shall be bound to make good the damage, &c." Vide Cowper 485.

+ *Sec. 60.* And it is recited by 9. Geo. 3. c. 29. "That whereas some doubts have arisen whether the said act of 1. Geo. 1. s. 2. c. 5. extends to the pulling down and demolishing of mills," thereupon it is enacted, "That if any person or persons, unlawfully, riotously, and tumultuously" For the riotous destruction of fences, trees, &c. vide 6. Geo. 1. c. 16. ante. p. 215. "oufly

“ously assembled together, to the disturbance of the public peace, shall unlawfully, and with force demolish, or pull down, or begin to demolish or pull down any wind saw-mill, or other wind-mill, or any water-mill, or other mill, which shall have been or shall be erected, or any of the works thereto respectively belonging; such offender shall suffer death without clergy;” provided the prosecution be commenced within eighteen months after the offence committed.

Noy 101.

2. Croke 37.

Moor 755.

4. Comm. 147.

† *Stat. 61.* It is enacted by 13. Car. 2. c. 5. “That no person or persons whatsoever shall solicit, labour, or procure the getting of hands, or other consent of any persons above the number of twenty, to any petition, complaint, remonstrance, declaration, or other address to the king, or both, or either houses of parliament, for alteration of matters established by law in church or state, unless the matter thereof have been first consented unto, and ordered by three or more justices of that county, or by the major part of the grand jury of the county, or division of the county, where the same matter shall arise, at their public assizes, or general quarter sessions, or if arising in London, by the lord mayor, aldermen, and common council assembled; and that no person or persons whatsoever shall repair to his majesty, or both, or either the houses of parliament upon pretence of delivering any petition, complaint, remonstrance, or declaration, or other addresses, accompanied with excessive number of people, nor at any one time with above the number of ten people, upon pain of incurring a penalty not exceeding one hundred pounds and three months imprisonment, on conviction, by two witnesses, within six months, at the king’s bench, assizes, or quarter sessions. But this act shall not prevent the presentation of any public or private grievance, to any member of parliament, by any number not exceeding twenty, or to the king, for any remedy to be had thereupon.” (6)

(6) N. B. By 1. Will. & Mary, sess. 2. c. 2. s. 1. art. 5. usually styled the Bill of Rights, it is enacted, “That it is the right of the subjects to petition the king, and that all commitments and prosecutions for such petitioning are illegal.” On the trial of Lord George Gordon, it was contended that this article had virtually repealed the above statute of Charles 2; but Lord Mansfield declared it was the unanimous opinion of the Court, that neither that, nor any other act of parliament, had repealed it, and that it was in full force. Douglas 592, 593.

CHAPTER THE SIXTY-SIXTH.

OF OFFENCES

BY

OFFICERS IN GENERAL.

OFFENCES under the degree of capital, more immediately against the subject, not amounting to an actual disturbance of the peace, are either, . . .

1. Such as are committed by officers.
2. Such as are committed by common persons without any relation to an office.

Offences by officers seem reducible to the following heads :

FIRST, Neglect, or breach of duty.

SECONDLY, Bribery.

THIRDLY, Extortion.

As to the first of these offences, *viz.* neglect, or breach of duty.

Scit. 1. I take it to be agreed, that in the grant of every office whatsoever, there is this condition implied by common reason, that the grantee ought to execute it diligently and faithfully; for since every office is instituted, not for the sake of the officer, but for the good of some other, nothing can be more just, than that he who either neglects or refuses to answer the end for which his office was ordained, should give way to others who are both able and willing to take care of it. And therefore it is certain, that an officer is liable to a forfeiture of his office, not only for doing a thing directly contrary to the design of it, but also for neglecting to attend his duty at all usual, proper, and convenient times and places, whereby any damage shall accrue to those by or for whom he was made an officer.

Co. Lit. 233, 234.
Vide the case of the King v. Bambridge, Mich. Term, 23. Geo. 3. on an information for misfeasance as accountant at the pay-office, Whitehall.

9. Co. 50.
Co. Lit. 233.
2. Roll. 153.
1. 30.
2. And. 119.
Hard. 130.
Modern 193.
1. Sid. 81.
C. Car. 491.
(a) 39. H. 6. 32.
20. Ed. 4. 5.
21. Ass. 54.
2. H. 7. 11.
Plowden 379.
L. Quin. Ed.
4. 27.
11. Ed. 4. 1.

And some have gone so far as to hold, that an office concerning the administration of justice, or the commonwealth, shall be forfeited for a bare non-user, whether any special damage be occasioned thereby or not: but this opinion doth not appear to be warranted by any resolution in point, and the (a) authorities which are cited to maintain it do not seem to come up to it.

However it cannot but be very reasonable, that he who so far neglects a public office, as plainly to appear to take no manner of care of it, should rather be immediately displaced, than the publick be in danger of suffering that damage, which cannot but be expected some time or other from his negligence.

- (b) 9. Co. 50.
(c) Raym. 216.
(d) C. Jac. 426.

See 4. Comyns' Digest, tit. Officer.

Sett. 2. But it would be endless to enumerate all the particular instances, wherein an officer may be discharged or fined; and it also seems needless to endeavour it, because they are generally so obvious to common sense, as to need no explication; for what can be more plain, than that a gaoler deserves to be discharged and fined, for (b) voluntarily suffering his prisoners to escape, or for (c) barbarously misusing them? What can be more evident, than that a (d) sheriff is justly punishable for persuading a jury to underprize goods in the execution of *feri facias*, &c.? And therefore I shall leave the particular cases of this nature to every man's own judgment, which from the consideration of the general rules abovementioned, and the various circumstances of every case, will easily discern how far each offence of this kind deserves to be punished.

CHAPTER THE SIXTY-SEVENTH.

OF BRIBERY.

BRIBERY in a strict sense is taken for a great misprision of one in a judicial place taking any valuable thing whatsoever, except meat and drink of small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only. 3. Inst. 145.

Sett. 2. But bribery in a large sense is sometimes taken for the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity; for the law abhors any the least tendency to corruption in those who are any way concerned in its administration, and will not endure their taking a reward for the doing a thing which deserves the severest of punishments (1). 3. Inst. 149. Hobart 9. C. Jac. 65. 1. Levinz 40. 2. Salkeld 695. 11. Mod. 193.

(1) Therefore to bribe persons, either by giving money or promises, to vote at elections of members of corporations, which are erected for the sake of public government, is an offence for which an information will lie. 2. Ld. Ray. 1377. 1. Black. 383. 12. Mod. 314. But the Court will grant an information for this offence very cautiously, since the additional penalties by statute. 1. Black. 380. *Infra*, sect. 7.

Sett. 3. Also Bribery sometimes signifies the taking or giving of a reward for offices of a public nature. And surely nothing can be more palpably prejudicial to the good of the publick, than to have places of the highest concernment, on the due execution whereof the happiness of both king and people doth depend, disposed of not to those who are most able to execute them, but those who are most able to pay for them; nor can any thing be a greater discouragement to industry and virtue, than to see those places of trust and honour, which ought to be the rewards of those who by their industry and diligence have qualified themselves for them, conferred on such who have no other recommendation but that of being the highest bidders; neither can any thing be a greater temptation to officers to abuse their power by bribery and extortion, and other acts of injustice, than the consideration of the great expence they were at in gaining their places, and the necessity of sometimes straining a point to make their bargain answer their expectation. Vide Noy 102. Moor 781.

For

For these reasons, among many others, it is expressly enacted by 12. Rich. 2. c. 2. "That the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justice of the one bench and of the other, barons of the exchequer, and all other that shall be called to ordain, name, or make justices of the peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn that they shall not ordain, name, or make any of the abovementioned officers for any gift or brocage, favour or affection, nor that none which sueth by himself or by others, privily or openly, to be in any manner of office, shall be put in the same office, or in any other, but that they make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge."

By 4. Hen. 4. c. 5. "No sheriff shall let his bailiwick to farm to any man, for the time that he occupieth such office, &c."

Vide Noy 102.
Moor 781.

By 5. & 6. Edw. 6. c. 16. it is also enacted, "That if any person shall bargain or sell, or take any reward, or promise of any reward for any office, or the deputation of any office, any way concerning the king's revenue, or the keeping of his castles, or the administration or execution of justice (unless it be such an office as had been usually granted before the making of the said act by the justices of the king's bench or common pleas, or by justices of assize), that then every such person so bargaining or selling, or taking such reward, or promise, &c. shall not only forfeit his right to such office, or to the nomination thereof, but also every person who shall give any such reward or promise, &c. shall be adjudged a disabled person in law to have or enjoy such office, &c."

In the construction of this statute of 5. & 6. Edw. 6. c. 16. the following points have been resolved.

C. Jac. 269.
3. Inst. 148.
Salk. 468.
2. Lev. 289.
2. Ven. 187.
467.

SECT. 4. FIRST, That the offices of chancellor, register, and commissary in ecclesiastical courts, are within the meaning of the statute, inasmuch as those courts do not only determine matters which are brought before them merely *pro salute anime*, but also have the decision of disputes concerning the lawfulness of matrimony and legitimation of children, which touch the inheritance of the subjects, and also hold plea of legacies and tithes, &c. in which respects they are courts of justice; but it hath been adjudged, that no office in fee is within the statute.

SECT.

SECT. 5. SECONDLY, That one who makes a contract for an office contrary to the purport of the said statute, is so far disabled to hold the same, that he cannot at any time during his life be restored to a capacity of holding it by any grant or dispensation whatsoever.

1. Lev. 131.
Hobart 75.
Co. Lit. 234.
C. Car. 361.
C. Jac. 386.

THIRDLY, That a bond by a deputy of an office to pay a certain sum at all events, is within the statute, and consequently totally void, though it also contain other conditions which, if they stood by themselves, would be good; but not a bond to pay half the profits or a certain sum out of the profits of the office for a deputation.

Salk. 466. 468.
6. Mod. 234.
3. Co. 32.
C. Eliz. 529.
530.
1. And. 107.
150.

FOURTHLY, That the statute extends not to offices in the Plantations.

Salkeld 411.

AS TO THE SECOND POINT, *viz.* How bribery is punishable.

SECT. 6. It is said, that at common law, bribery in a judge, in relation to a cause depending before him, was looked upon as an offence of so heinous a nature, that it was sometimes punished as high treason before the 25. Edw. 3. and at this day it is certainly a very high offence, and punishable, not only with the forfeiture of the offender's office of justice, but also with fine and imprisonment, &c.

3. Inst. 145.
1. Hale 262.
1. Leon. 295.
C. Jac. 65.
1. Rush. Col. 31.

SECT. 7. Also all the other abovementioned kinds of bribery, taken in a large sense, seem to be punishable with fine and imprisonment, &c. And in the time of king James the First, the earl of M. lord high treasurer of England, being impeached by the commons for refusing to hear petitions referred to him by the king till he had received great bribes, and for other such like misdemeanors, was, by sentence of the lords, deprived of all his offices, and disabled to have any for the future, or to sit in the parliament, and was fined fifty thousand pounds, and imprisoned during the king's pleasure (2).

3. Inst. 148.

(2) This was the case of the Earl of Middlesex, who had been raised by Buckingham's interest from the rank of a London merchant to be lord high treasurer of England, but having incurred the displeasure of his patron, the favourite vowed revenge, and employed all his credit with the commons to procure the impeachment of the treasurer; but the charges against him were neither numerous nor important, the whole measure very dissatisfactory to the king, and the fine was remitted upon the accession of Charles the First. Parl. Hist. vol. vi. p. 191.

AN ATTEMPT to induce a man to advise the king, under the influence of a bribe, is criminal, though never carried into execution, 4. Burr. 2499. Offering money to a privy councillor to procure the reversion of an office in the gift of the crown, has been adjudged a misdemeanor, and punishable by information, Rex v. Vaughan.

(3) But if it appears to be a void election, an action for this penalty is not maintainable. *Ld. Ray.* 904.

† *Seft.* 8. And it is enacted by 7. & 8. Will. 3. c. 7. "That all contracts, promises, bonds, and securities whatsoever, made or given to procure any return of any member to serve in parliament, or thing relating thereunto, shall be adjudged void; and that whoever makes or gives such contract, security, promise, or bond, or any gift or reward, to procure a false or double return, shall forfeit 300*l.*; one third to the king; one third to the poor; one third to the informer; to be recovered by action or information (3)."

3. Burr. 1270.
1374-
1. Black. 351,
356. 524 541.

† *Seft.* 9. And it is further enacted by 2. Geo. 2. c. 24. "That if any person having or claiming a right to vote at any election for members of parliament, shall ask, receive, or take any money, or other reward by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give his vote, or to refuse or forbear to give his vote in any such election, or if any person by himself, or any person employed by him, doth or shall by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes, or to forbear (a) to give his or their votes in any such election, such offender shall for every offence forfeit 500*l.* together with full costs of suit, by action or information at *Westminster*. And any person offending in any of the said cases, from and after judgment has been so obtained against him, or by summary action, or prosecution, or being any otherwise lawfully convicted thereof, shall be for ever disabled to vote in any election for members of parliament, or to hold, exercise, or enjoy any office or franchise as a member of any city, borough, town corporate, or cinque port, as if he was dead."

(a) It is not necessary that the party should actually forbear in consequence of the procurement.

3. Will. 292.

Sect. 10. But it is further enacted, "That if such offender, within twelve months next after such election, discover any other offender so that he be thereupon convicted, such offender so discovering and not having been before that time convicted of any offence against this act, shall be indemnified and discharged from all penalties and disabilities which he shall then have incurred by any offence against this act. *Provided the prosecutions be commenced within two years, which commencement shall be (by 9. Geo. 2. c. 38.) the actual arrest, summons, or service of process (4)."

(4) This statute does not take away the common-law process by indictment or information for bribery at elections for members of parliament. But as the offender would be equally liable to the penalties of the statute, vide 1. Black. 524. the Court will

will not grant an information until the two years are expired, 3. Burr. 1335, except in particular cases, founded on particular reasons, 3. Burr. 1340. And it seems as if the Court would adjourn passing sentence on a conviction by indictment, on the defendant's entering into a recognizance to appear on the day when the time limited for bringing the *qui tam* action will expire, 3. Burr. 1359; but the Court will not; after that time has elapsed, prolong the judgment on account of the defendant's having indicted one of the witnesses upon whose testimony he was convicted, because being so much interested he could not be admitted a witness, 3. Burr. 1388. 1. Black. 404. Nor will they stay the judgment on the *posse* in an action for this injury, on affidavits that the defendant is a discoverer, 3. Willson 35. Nor will they grant a new trial because a witness was *particeps criminis*, Sayer 290. But they will grant a new trial if, upon a special case, the jury have not found who was the first discoverer, although they find that the defendant produced a judgment by which it appeared that he had obtained a verdict against a third person upon this act; for it does not follow conclusively, that the person who obtains the verdict is necessarily the discoverer, 4. Burr. 2504. 2469. And it has been determined, that the person who makes an affidavit of the fact upon which another obtains a verdict, is the true discoverer, 4. Burr. 2286. And although a verdict is not a conviction until it be completed by a judgment, yet, after it is so completed, which the Court will grant leave to do, it will relate back to the time of the original discovery, *ibid.* 1. Black. 665. Vide also the Cricklade Case, one volume octavo, published by E. Brooke, 1785. also 22. Geo. 3. c. 31.

If the elector is bribed by a friend of the candidate, and exchanges a note to insure the vote, it is bribery within the act, although the elector voted for the opposite party, 3. Burr. 1235. 1. Black. 317. And so also is laying a wager with the voter that he does not vote for a particular candidate, Loft, 552. Vide also *Allen v. Hearne*, Mich. 26. Geo. 3. 1. Term Rep. 56. And by giving the elector money, he admits his right to vote, and shall not be permitted afterwards to controvert it, 3. Burr. 1586. Nor is it necessary that the candidate should have declared himself at the time the bribe was given, because asking a vote for him, under the title of the candidate's friend, makes him a candidate, *Coomb v. Pitt*, 5. Geo. 3. 1. Black. 523. Nor is it necessary that the person bribed should actually have a right to vote, 3. Willf. 35. But in an action the declaration must state *what* the defendant received or took as a reward, and whether money, or what particular species of reward, and not indefinitely and disjunctively, "that he took a gift or reward," and being upon a criminal charge, this defect is not helped by verdict, 4. Burr. 2471.

CHAPTER THE SIXTY-EIGHTH.

OF EXTORTION.

IN treating of Extortion, I shall consider,

1. What shall be called Extortion.
2. How it shall be punished.

As to THE FIRST POINT, *viz.* What shall be called Extortion.

SECT. 1. It is said, that Extortion in a large sense signifies any oppression under colour of right; but that in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due.

Co. Lit. 368.
10. Co. 102.
3. Inst. 149.
C. Car. 438.
448.
Hutton 53.
3. Inst. 68.
Salkeld 382.

1. Ray. 149. 11. Mod. 80. 137.

SECT. 2. It is said, that at the common law, which was affirmed by the *statute of Westminster* 1. c. 26. it was extortion for any sheriff or other minister of the king, whose office did any way concern the administration or execution of justice, or the common good of the subject, to take any reward whatsoever for doing his office, except what he received from the king. And surely this was a most excellent institution, highly tending to promote the honour of the king, and the ease of the people, and hath been always thought to conduce so much to the public good, that all prescriptions whatsoever which have been contrary to it, have been holden to be void; and upon this ground it hath been resolved, that the prescription by virtue whereof the clerk of the market claimed certain fees for the view and examination of all weights and measures, &c. was merely void.

2. Inst. 209.
Co. Lit. 368.
42. Ed. 3. 4. 5.
2. R. Abr.
266.
Cro. Cir. 250.
4. Inst. 274.
Moor 523.
2. Inst. 209.

SECT. 3. But it hath been holden, that the fee of twenty pence, commonly called the BAR-FEE, which hath been taken, time out of mind, by the sheriff, of every prisoner who is acquitted, and also the fee of one penny, which was claimed by the coroner of every visne, when he came before the justices in eyre, are not within the meaning of the statute, because they are not demanded by the sheriff or coroner for doing any thing relating to their offices, but claimed as perquisites of right belonging to them, whether they do any thing or not. But there seemeth to be no necessity for this distinction, for it cannot be intended to be the meaning of

21. H. 7. 17.
2. Inst. 210.
2. Inst. 175.
S. P. G. 49.

21. H. 7. 17. of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers. For the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded without the highest resentment (1).

(1) For the fees allowed to the several officers, vide *Bin. Dig.* 323, 324. 1. Modern 5. 11. Modern 89. *Ld. Ray.* 4. 103. 9. and 10. *Will.* 3. c. 41. 29. *Eliz.* c. 4. 3. *Jac.* 1. c. 7. 10. and 11. *Will.* 3. c. 23. f. 8. 3. *Geo.* 1. c. 15. 17. *Geo.* 3. c. 26. f. 6. *Cro. Cir.* 253.

Sec. 4. Also it having been found by experience, that generally it is vain to expect that any officers who depend upon a known fixed salary, without having any immediate benefit from any particular instances of their duty, should be so ready in undertaking, or diligent in executing them, as they would be, if they were to have a present advantage from them, it hath been thought expedient to permit them to take certain fees in many cases, but it is certain that they are guilty of extortion if they take any thing more. Also it hath been resolved, that a promise to pay them money for the doing of a thing which the law will not suffer them to take any thing for, is merely void, however freely and voluntarily it may appear to have been made; for if once it should be allowed that such promises could maintain an action, the people would quickly be given to understand how kindly they would be taken, and happy would that man be who could have his business well done without them (2):

3. *Inst.* 149.
2. *Inst.* 210.
Co. Lit. 368.
1. *R. Abr.* 6.
26. 41.
1. *Roll.* 313.
Noy 76.
1. *Jones* 65.
C. *Eliz.* 654.
Moor 468.
523.
C. *Jac.* 103.

(2) It is extortion to oblige an executor to prove a will in the bishop's court, and to take fees thereon, knowing the same to have been proved in the prerogative court. *Strange* 73. Or in a sheriff's officer to admit a prisoner to bail, upon an agreement to receive a certain sum when the prisoner should pay to a third person another sum of money, 2. *Burr.* 924. To arrest a man in order to obtain a release from him, 8. *Mod.* 189. In a gaoler to obtain money from his prisoner by any colourable means, 8. *Mod.* 226. *Str.* 575. Or in a church-warden *colore officii*, 1. *Sid.* 307. In a miller, if he takes more for toll than is due by custom, *Ld. Ray.* 149. Or a commissary for an absolution, 3. *Leo.* 268. Or a ferryman more for his ferry, 4. *Mod.* 101. Or to seize upon the place where a fair is held, and by building stalls, to force an exorbitant price for them, *Ld. Ray.* 150. Or in an under sheriff to refuse to execute process till his fees are paid, *Salk.* 330. Or to take a bond for his fee before execution is sued out, *Hutt.* 33. Or for a coroner to refuse his view until his fees are paid, 3. *Inst.* 149.

Sec.

As to THE SECOND POINT, viz. How Extortion shall be punished.

Sec. 5. There is no doubt, but that at common law it is severely punishable at the king's suit, by fine and imprisonment; and also by a removal from the office, in the execution whereof it was committed.

Sec. 6. Also extortion in sheriffs, escheators, bailiffs, gaoler, the king's clerk of the market, and other inferior ministers and officers of the king, whose offices do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service, hath a farther additional punishment by the abovementioned statute of Westminster, by which it is enacted, "That no sheriff, nor other king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king, and that he who so doth, shall yield twice as much, and shall be punished at the king's pleasure (3)."

(3) And an action lies to recover the double value, 3. Com. Dig. 323. But the indictment which may be brought at the sessions, Str. 73. or information, must state the fact particularly, 3. Leo. 268. 25. Edw. 3. ft. 3. c. 9. 11. Mod. 80. It must also specify the time when the offence was committed, 4. Mod. 101, 103. But although it be omitted to be stated for what the thing extorted was taken, yet it is good after verdict, Sid. 91. And, in general, the king's bench will oblige the party to demur to a defective indictment for extortion, 5. Mod. 13. And whatever may be the sum, if there is proof only of a shilling taken, the defendant is guilty; for the taking is the offence, and not the contract, Ld. Ray. 149. And he also who assists is equally guilty, for there are no accessaries in extortion, Str. 73. Extortion may be laid in any county, by the 31. Eliz. c. 5. Sed vide s. Hawkins, ch. 26. f. 50.

11. Mod. 80.
2. R. Abr. 323.
3. 75.
Raym. 315.
1. Inst. 209.
3. Leon. 268.
3. Edw. 3. c.
26.
1. Strange 74.

CHAPTER THE SIXTY-NINTH

OF PERJURY.

OFFENCES under the degree of capital, more immediately against the subject, not amounting to an actual disturbance of the peace, which may be committed by private persons, without any relation to an office, are,

1. Such as are infamous, and grossly scandalous, proceeding from principles of downright dishonesty, malice, or faction.

2. Such as are of an inferior nature, and neither infamous, nor grossly scandalous.

Those of the first kind seem to be reducible to the following heads :

1. Perjury, and subornation of Perjury.
2. Forgery.
3. Cheats.
4. Conspiracy.
5. Keeping of a bawdy-house.
6. Libels.

AND FIRST of *perjury*, and *subornation of perjury*,

Of both which there are two kinds.

1. By the common law.
2. By statute.

PERJURY, by the *common law*, seemeth to be a wilful false oath, by one who being lawfully required to depose the truth in any proceeding in a course of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not.

Com. Dig. tit.
Jus. of Peace
B. 102.

For the better understanding whereof, I shall consider the following particulars :

1. How far this offence must be wilful.
2. In what kind of proceedings it may be committed.
3. In what cases an oath may be said to be so far lawfully administered, that he who takes it may become guilty of perjury.
4. In what kind of oaths perjury may be committed.
5. How far the oath must be false.
6. Whether the matter of the oath must be absolute.
7. How far things sworn ought to be material to the point in question.
8. How far the false oath must be credited.

As to THE FIRST POINT, *viz.* How far this offence must be wilful.

5. Mod. 350.
20. Mod. 195.
Balkeld 513.
1. Inst. 163.
Loff. 773.

Self. 2. It seemeth that no one ought to be found guilty thereof without clear proof, that the false oath alledged against him was taken with some degree of deliberation ; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprise, or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is of all crimes whatsoever the most infamous and detestable.

As to THE SECOND POINT, *viz.* In what kind of proceedings this offence may be committed.

C. Eliz. 163,
May 12.
2. R. Abr.
177.
Mason 61.

Self. 3. It seems to be clearly agreed, that all such false oaths as are taken before those who are any ways intrusted with the administration of public justice, in relation to any matter before them in debate, are properly perjuries ; and it seems to have been holden by some, that all such false oaths as are taken before persons authorized by the king to examine witnesses in relation to any matter whatsoever, wherein his honour or interest are concerned, are also punishable as perjuries. And surely there can be no offence of this nature which will not justly deserve a public prosecution, inasmuch as if it should once prevail, it would make it impossible to have

have any law whatsoever duly executed, and expose the lives, liberties, and properties, of the most innocent to the mercy of the greatest villains. And therefore it hath been holden, that not only such persons are indictable for perjury, who take a false oath in a court of record, upon an issue therein joined, but also all those who forswear themselves in a matter judicially depending before any court of (a) equity, or (a) C. Eliz. 297. spiritual (b) court, or any other (c) lawful court, whether the proceedings therein be of record or not (d), or whether they concern the interest of the king or subject. And it is said to be no way material, whether such false oath be taken in the face of a court, or persons authorised by it to examine a matter, the knowledge whereof is necessary for the right determination of a cause, and (e) therefore, that a false oath before a sheriff, upon a writ of enquiry of damages, is as much punishable as if it were taken before the Court on a trial of the cause. Skinner 327. 1. Sid. 418. 1. R. Abr. 40. 5. Mod. 348. (b) C. Eliz. 185. 609. 2. Roll. 410. 1. R. Abr. 40. 1. Leon. 137. Com Dy. 243. (c) 2. R. Abr. 257. 1. R. Abr. 41. Winch 3. 5. Mod. 348. Hutt. 34. 1. Mod. 55. Yelv. 27. C. Eliz. 297. 342. 348. 905. (d) 12. Co. 101. C. Jac. 212. Con. C. Jac. 120. 3. Inst. 164. Vide sect. 18. (e) 1. R. Abr. 39.

Also it seemeth, that any false oath is punishable as perjury, which tends to mislead the Court in any of their proceedings relating to a matter judicially before them, though it no way affect the principal judgment which is to be given in the cause, as where a (f) person who offers himself to be bail for another knowingly and wilfully swears that his substance is greater than it is. Also it hath been resolved, that not only such oaths as are taken upon judicial proceedings, but also all such as any way tend to abuse the administration of justice, are properly perjuries, as where one (g) takes a false oath before a justice of peace, in order to induce him to compel another to find sureties for the peace, &c. or where a person forswears himself (h) before commissioners appointed by the king to inquire of the forfeitures of his tenants estates, &c. whereby he makes them liable to be seized by exchequer process. Also it hath been said, that a false oath is punishable as perjury, in some cases, wherein the king's honour or interest is concerned, though it do not concern the administration of justice, as where one swears a false oath concerning the possession of lands, before commissioners appointed by the king to inquire of such persons whose titles to the lands in their possession are defective, and want the supply of the king's patents: and this is certainly an offence of a very heinous nature (i), tending not only to frustrate the king's gracious purpose, but to abuse his goodness by inducing him to grant his patents to those who are out of possession, and no way within the intent of the commission, which instead of quieting the possessions of the subjects, cannot but end in the greatest disturbance of them. (i) Hobart 60.

Com. 7. Ven.

379.

1. R. Abr.

357.

1. R. Abr. 257.

2. Inst. 166.

However it seemeth certain, that no oath whatsoever in a mere private matter, howsoever wilful or malicious it may be, is punishable as perjury in a criminal prosecution; for private injuries are left to be redressed by private actions; and upon this ground it hath been holden, that a false oath taken by one upon the making of a bargain, that the thing sold is his own, is not punishable as perjury. Also from what hath been said it appears, that the notion of perjury is confined to such public oaths only as affirm or deny some matter of fact, contrary to the knowledge of the party; and therefore, that it doth not extend to any *promissory oaths* whatsoever; from which it clearly follows, that no officer, public or private, who neglects to execute his office in pursuance of his oath, or acts contrary to the purport of it, is indictable for perjury in respect of such oath; yet it is certain, that his offence is highly aggravated by being contrary to his oath, and therefore, that he is liable to the severer fine on that account.

As to THE THIRD POINT, *viz.* In what cases an oath may be said to be so far lawfully administered, that he who takes it may become guilty of perjury by swearing falsely.

Self. 4. It seemeth clear, that no oath whatsoever taken before (a) persons acting merely in a private (b) capacity, or (c) before those who take upon them to administer oaths of a public nature, without legal authority for their so doing, or (d) before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them, or even (e) before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, can ever amount to perjuries in the eye of the law, because they are of no manner of force, but are altogether idle (1).

(a) 1. R. Abr.

357.

2. Inst. 165.

Yelv. 72.

(b) Cro. El.

359.

(c) 1. Sid. 274.

1. R. Abr.

357.

March. 38. 131.

(d) Yelv. 111.

2. Inst. 166.

2. Inst. 97.

(e) Car. 2. 25.

1. Roll. 417. 4. Inst. 278. See Dougl. 156. (c) Sid. 148.

(1) 2^d. If any magistrate is justifiable in taking a voluntary affidavit in any extrajudicial matter. Vide 15 Geo. 3. c. 39. 3. Burn, 244.

And from the same ground it seemeth also clearly to follow, that no false oath in an affidavit made before persons falsely pretending to be authorized by a court of justice to take affidavits in relation to matters depending before such court, can properly be called perjury, because no affidavit is any way regarded, unless it be made before persons legally intrusted with a power to take it, as being both of sufficient ability to ask all proper questions of the party who shall make such affidavit, and also of such integrity as not to suffer any thing to be inserted therein, to the truth whereof the party

party hath not sworn. And though it may be said affidavit taken before persons falsely pretending to be commissioned for such purpose by the courts of justice tend to impose upon such courts, and may happen through surprize to be read, and may also in its own nature be altogether as heinous as if it had been made before persons regularly empowered to take it; yet inasmuch as it is of itself of no manner of validity, and is no otherwise regarded, than as it hath the appearance of being sworn before persons legally commissioned, without which it would have no manner of credit, it seemeth that offences of this nature are most properly punished by severely chastising those who usurp such an authority of administering of oaths without any legal warrant. 4. Comm. 157.
3. Inst. 165.

However, it hath been adjudged, that a false oath taken before persons, who, having been commissioned to examine witnesses, happen to proceed after the demise of the king who gave them their commission, and before notice thereof, may be punished as perjury, for it would be of the utmost ill consequence to make such proceedings void; and therefore, though all such commissions be in strictness legally determined by the demise of the king, who gave them, without any notice, yet for the necessity of the case, whatever is done under them before such notice, must be suffered to stand good, for otherwise the most innocent and most deserving subjects would be unavoidably exposed to numberless prosecutions for doing their duties, without any colour of a fault. And *Quære*, Whether a perjury in a court whose proceedings are afterwards reversed by error, may not still be punished as perjury, notwithstanding such reversal (2). C. Car. 98, 99.
1. Ven. 124.

(1.) In the case of the King v. Alford, Summer assizes for Somerset 1776, the defendant was indicted for perjury in a cause tried at the assizes before Mr. Justice Willes. The caption of the indictment recited the names of the Judges who were in the commission, and charged, "That at the said trial, before the Hon. Edward Willes, *one* of the Justices aforesaid, the defendant took his corporal oath, &c. he the said ward Willes then and there having competent authority to administer an oath to the defendant in that behalf," the prisoner was found guilty. But Mr. Baron Eyre, who tried the cause, doubted of the authority of one commissioner to administer an oath, the record of *non propter*, which was read in evidence, stating, in the usual form that the trial was before both the Judges; and therefore another doubt arose whether the evidence maintained the indictment. On reference, the first Hilary Term the Judges were unanimous, that either of the Judges may administer the oath; frequently there was no variance, and the conviction good. Cases in Cro. Law, 15.

As to THE FOURTH POINT, viz. In what kind of oaths perjury may be committed,

Sec. 5. It seemeth clear, that a man may be in danger of being guilty thereof, not only in respect of a false oath taken by him as a witness for another, but also in respect of a false

a false oath taken by him in his own cause, either in an answer to questions put to him in a court of (a) law or (b) equity, having power to purge him upon oath concerning his knowledge of the matters in dispute, or in his (c) affidavit concerning some collateral matter, wherein the parties own oaths are allowed to be taken. But it seems, that a juror who gives a verdict contrary to manifest evidence, is not properly guilty of perjury within the abovementioned description, because he is not sworn to depose the truth, but only to give a true judgment upon the deposition of others, and in many cases is not punishable at all *in foro humano*, as shall be set forth more at large in the chapter of Conspiracy.

(a) 1. R. Abr. 40. 13.
 C. Eliz. 609.
 (b) 1. Leon. 127.
 C. Eliz. 135.
 903.
 1. R. Abr. 40.
 69.
 1. Sid. 244.
 (c) 1. Roll. 79.
 Noy 128.
 1. Mod. 348.
 Moor 656.
 1. Keble 452. 2. R. Abr. 77.

As to THE FIFTH POINT, *viz.* How far the matter of the oath which may amount to perjury, must be false.

Sec. 6. It (d) is said not to be material whether the fact which is sworn be in itself true or false; for howsoever the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false, inasmuch as he wilfully swears, that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition, which any stranger might make as well as he.

(d) Palm. 294.
 Hetley 97.
 1. R. Abr. 77.
 3. Inst. 166.
 Con.
 3. Mod. 222.

As to THE SIXTH POINT, *viz.* How far the oath must be absolute.

1. Inst. 166. *Sec. 7.* It is said, that no oath shall amount to perjury unless it be sworn absolutely and directly; and therefore, that he who swears a thing according as he *thinks, remembers, or believes*, cannot in respect of such an oath be found guilty of perjury (e).

(e) In *Miller's Case*, 3. Wils. 427. 2. Bl. Rep. 381, Lord Chief Justice De Grey said, it was a mistake mankind had fallen into, that a person cannot be convicted of perjury, who swears that he *thinks or believes* a fact to be true, for that he certainly does, and it only renders the proof of it more difficult. And in the case of the *King v. Key*, B. R. Trin. Term 1724, this opinion was confirmed by Lord Mansfield, *Cases in Crown Law* 269. This question was also agitated in the common pleas, Mich. Term 1780, by Mr. Serjeant Walker, when Lord Loughborough and all the other Judges were unanimous, that *belief* was to be considered as an absolute term, and that an indictment might be supported upon it.

As to THE SEVENTH POINT, *viz.* How far the thing sworn ought to be material to the point in question.

Seet. 8. It seemeth clear, that if the oath for which a man is indicted of perjury, be wholly foreign from the purpose, or altogether immaterial, and neither any way pertinent to the matter in question, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot amount to perjury, because it is merely idle and insignificant: as if upon a trial, in which the question is whether such a one was *compos* or not, a witness introduces his evidence by giving a history of a journey which he took to see the party, and happens to swear falsely in relation to some of the circumstances of the journey. Also it hath been adjudged, that where a witness being asked by a Judge whether *A.* brought a certain number of sheep from one town to another all together, answered, that he did so, where in truth *A.* did not bring them all together, but part at one time and part at another, yet such witness was not guilty of perjury, because the substance of the question was, whether *A.* did bring them at all or not, and that manner of bringing them was only a circumstance. And upon the same ground it is said to have been adjudged, that where a witness being asked, whether such a sum of money were paid for two things in controversy between the parties, answered, that it was, where in truth it was paid only for one of them by agreement, such witness ought not to be punished for perjury, because as the case was, it was no way material whether it were paid for one or both. Also it is said to have been resolved, that a witness who swore that one drew his dagger and beat and wounded *J. S.* where in truth he beat him with a staff, was not guilty of perjury, because the beating only was material.

But perhaps in all these cases it ought to be intended, that the question was put in such a manner, that the witness might reasonably apprehend that the sole design of putting it was to be informed of the substantial part of it, which might induce him through inadvertency to take no notice of the circumstantial part, and give a general answer to the substantial; for otherwise, if it appear plainly, that the scope of the question was to sift him as to his knowledge of the substance, by examining him strictly concerning the circumstances, and he give a particular and distinct account of the circumstances, which afterwards appears to be false; surely he cannot but be guilty of perjury, inasmuch as nothing can be more apt to incline a jury to give credit to the substantial part of a man's evidence, than his appearing to have

1. Freem. 406.
2. Sid. 274.
Vide inf. f. 24.
Aley 79.
1. R. Abr. 141.
75.
C. Eliz. 500.
Salkeld 514.
Noy 36.
2. Roll. 145.
C. Car. 521.
Hobart 53.
Carth. 422.
5. Mod. 345.
348.
3. Inst. 164.

2. Roll 41. 369

2. Roll. 42.

Hetley 97.

Roll. 368.
Hamer 302.

have an exact and particular knowledge of all the circumstances relating to it. And upon these grounds I cannot but think the opinion of those Judges very reasonable, who held, that a witness was guilty of perjury, who in an action of trespass for breaking the plaintiff's close, and spoiling it with sheep, deposed that he saw thirty or forty sheep in the said close, and that he knew them to be the defendant's, because they were marked with such a mark, which he knew to be the defendant's mark, where in truth the defendant never used such a mark; for the giving such a special reason for his remembrance could not but make his testimony more credible than it would have been without it; and though it signified nothing to the merits of the cause, whether the sheep had any mark at all or not, yet inasmuch as the assigning such a circumstance in a thing immaterial had such a direct tendency to corroborate the evidence concerning what was most material, and consequently was equally prejudicial to the party, and equally criminal in its own nature, and equally tending to abuse the administration of justice, as if the matter sworn had been the very point in issue, there doth not seem to be any reason why it should not be equally punishable. But I cannot find this matter any where thoroughly settled or debated, and therefore shall leave it to every man's own judgment, which, from the consideration of the circumstances of each particular case, may generally, without any great difficulty, discern whether the matter in which perjury is assigned, were wholly impertinent, idle, and insignificant, or not, which seems to be the best rule for determining whether it be punishable as perjury or not.

Case 195-

Siderfin 274-

But it is said in *Siderfin*, speaking as I suppose of an answer in chancery, that a man may be guilty of perjury at the common law by swearing a thing not material. But surely this ought not to be understood in so great a latitude, as if it were meant that every falsity in such an answer must needs be perjury, howsoever foreign, circumstantial, and trivial the point wherein it is assigned may be, which is directly contrary to what seems to be clearly taken for granted in other books. And therefore, perhaps, where it is said that a man may be guilty of perjury in a thing not material, no more may be meant, but that he may be as well guilty thereof by answering to a matter not charged in the bill, as by answering to the matters therein contained, which may alone be said to be material, because the defendant is not obliged in his answer to take notice of any thing else. Or else, perhaps, the meaning may be, that in a prosecution for perjury at common law, setting forth a false oath in such an answer relating to the thing said to be in variance, the falsity

falsity shall be intended *prima facie* to have been some way material in the cause, unless the contrary be proved by the other side. whereas in all prosecutions upon the statute, it is necessary expressly to shew in what manner the false oath is material to the cause in question, because that statute, extending only to such perjuries whereby some person is grieved, cannot maintain a prosecution which does not bring the case within the purview of it, by shewing that some one was grieved by the injury complained of, which he could not be, unless the thing sworn were some way material. However, it seemeth to be clear, that a man may as well be guilty of perjury by a false oath tending to extenuate or aggravate the damages, as by an oath which is direct to the fact in issue. (3) Vide inf. f. 23.

(3) It is not necessary that it appear to what degree the point in which a man is perjured was material to the issue, for if it is but circumstantially material, it will be perjury. *Ld Raymond* 218. Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon, for in the nature of the thing an evidence may be very material, and yet it may not be full enough to prove directly the point in question. *Ld Raymond* 889. And it is incumbent on the prosecutor to prove the materiality of the perjury. *O. B.* 1784. p. 305. C. Jac. 212.
12, Co. 101.
1. Leon. 198.

As to THE EIGHTH POINT, *viz.* How far the false oath must be credited.

Sec. 9. It hath been holden not to be material upon an indictment of perjury at common law, whether the false oath were at all credited (4), or whether the party in whose prejudice it was intended, were in the event any way aggrieved by it or not, inasmuch as this is not a prosecution grounded on the damage to the party, but on the abuse of public justice. 3. Leon. 230.
1. Leon. 211.

(4) But on the trial the oath will be taken as true, until it be disproved, and therefore to convict a man of perjury, a probable, credible witness is not enough, for the evidence must be strong, clear, and more numerous on the part of the prosecution than the evidence on the other side. Therefore the law will not permit a man to be convicted of perjury, unless there are two witnesses at least, *Haylock's case*, *O. B.* 1786, p. 812. 10 *Mod.* 194. Nor shall the party prejudiced by the perjury be admitted as a witness to prove it. *L. Raymond* 396.

II. SUBORNATION of perjury by the common law, seems to be an offence in procuring a man to take a false oath amounting to perjury, who actually takes such oath. 1. R. Abr. 412.
57. 79.
Yelv. 72.
C. Jac. f. 38.
C. Car. 337.
2 Keb. 399.
3. Mod. 122.
Farrell, 102.
Vide p. 328.
for a further
punishment
inflicted by 2 Geo 2. c. 25. Vide also p.
335, sect. 29.

Sec. 10. But it seemeth clear, that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury, yet it is certain that he is liable to be punished, not only by fine, but also by infamous corporal punishment.

Sec.

Of perjury by 5. Eliz. c. 9. Thus far of perjury, and subornation of perjury by the common law.

And now I shall proceed to examine in what manner these offences are restrained by statute.

Sec. 11. As to which it is to be observed, that it is enacted by 5. Eliz. c. 9. "That whoever shall unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever, depending in suit and variance, by any writ, action, bill, complaint, or information, in any wise concerning any lands, tenements, or hereditaments, or goods, chattels, debts or damages, in any of the king's courts of Chancery, Whitehall, or elsewhere, within any of the king's dominions of England or Wales, or the marches of the same, where any person or persons shall have authority by virtue of the king's commission, patent or writ, to hold plea of land, or to examine, hear, or determine, any title of lands, or any matter or witnesses concerning the title, right, or interests of any lands or tenements, or hereditaments, or in any of the king's courts of record, or in any leet view or frank pledge or law-day, ancient demesne-court, hundred-court, court-baron, or in the court or courts of Stannary in the counties of Devon or Cornwall, or shall unlawfully and corruptly procure or suborn any witness or witnesses, who shall be sworn to testify *in perpetuum rei memoriam*, shall for such offence, being thereof lawfully convicted or attainted, forfeit the sum of forty pounds."

By 5. Eliz. c. 9. "If any such offender so being convicted or attainted, shall not have any goods or chattels, lands or tenements, to the value of forty pounds, that then every such person shall suffer imprisonment by the space of one half year without bail or mainprize, and stand upon the pillory the space of one whole hour, in some market-town next adjoining to the place where the offence was committed, in open market there, or in the market-town itself where the offence was committed."

Sec. 12. By 5. Eliz. c. 9. s. 5. "No person being so convicted or attainted, shall from thenceforth be received as a witness in any court of record, in any of the king's dominions of England, Wales, or the marches of the same, till such judgment against him shall be reversed by attain, or otherwise; and that upon every such reversal, the party grieved shall recover damages against the party who

“ who did procure the said judgment so reversed to be
“ first given, &c.”

Stat. 13. By 5. Eliz. c. 9. s. 6. “ If any person or
“ persons shall either by the subornation, unlawful pro-
“ curement, sinister persuasion, or means of any other, or
“ by their own act, consent, or agreement, wilfully and
“ corruptly commit any manner of wilful perjury, by his
“ or their deposition, in any of the courts before men-
“ tioned, or being examined *ad perpetuam rei memoriam*,
“ that then every such offender being duly convicted or
“ attainted, shall forfeit twenty pounds, and have impris-
“ onment by the space of six months without bail or
“ mainprize; and the oath of such an offender shall not
“ from thenceforth be received in any court of record in
“ England or Wales, until such judgment shall be reversed,
“ &c. on which reversal the party grieved shall recover da-
“ mages in the manner before mentioned.”

By 5. Eliz. c. 9. s. 7. “ If such offender shall not have
goods or chattels to the value of twenty pounds, that
then such person shall be set on the pillory in some
market-place within the shire, city, or borough, where
the offence shall be committed by the sheriff or his mi-
nisters, if it shall fortune to be without any city or
town corporate, and if it happen to be within any such
city or town corporate, then by the head officer of such
city, &c. where he shall have both ears nailed, &c.”

Stat. 14. By 5. Eliz. c. 9. s. 8, 9. “ One moiety of the
“ said forfeiture shall be to the king, and the other moiety
“ to such person as shall be grieved, hindered, or molested, by
“ reason of any of the offences before mentioned, that will
“ sue for the same, &c. and that as well the Judge and Judges
“ of every such of the said courts where any such suits shall
“ be, and whereupon any such perjury shall be committed,
“ as also the Justices of assize and gaol delivery, and justices
“ of the peace at their quarter sessions (5), both within the
“ liberties and without, may enquire of, hear, and deter-
“ mine all offences against the said act.”

(5) Prosecutions upon this statute being more difficult than by indictment at com-
mon law, are very seldom brought, especially at the sessions; and at common law
justices of the peace have no jurisdiction over the offence. 2. Hawk. c. 8. s. 38.
Strange 1088.—The safer and most usual mode therefore is by indictment at the assizes,
or in the King's Bench. 3. Burn 294.

Stat. 15. But by 5. Eliz. c. 9. s. 11. it is provided, “ That
“ the said act shall no way extend to any spiritual or eccle-
“ siastical court, but that every such offender as shall offend
“ in

" in form as aforesaid, shall be punished by such usual and ordinary laws as are used in the said courts."

Punishment of perjury.

Stat. 16. By 5. Eliz. c. 9. f. 13. it is also provided, " That the said statute shall not restrain the authority of any Judge, having absolute power to punish perjury before the making thereof, but that every such Judge may proceed in the punishment of all offences, punishable before the making of the said statute, in such wise as they might have done, and used to do, to all purposes, so that they set not upon the offender less punishment than is contained in the said act." From whence it seemeth undoubtedly to follow, that the court of King's Bench, &c. proceeding upon an indictment, or information of perjury, or subornation of perjury at common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any enquiry concerning the value of his land or goods.

Offenders may be transported. Vide *infra*, sect. 29. for the punishment of persons convicted of perjury, &c. acting as attorneys.

+ And by 2. Geo. 2. c. 25. made perpetual by 9. Geo. 2. 8. " Besides the punishment already to be inflicted by law for so great crimes, it shall be lawful for the Court or Judge before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction within the same county, for a time not exceeding seven years, there to be kept to hard labour during all the said time; or otherwise to be transported for a term not exceeding seven years, as the Court shall think most proper."

But for the better understanding of the other parts of this statute, I shall consider the following particulars:

1. How far the very words of the statute must be pursued in a prosecution grounded thereon.
2. In what kind of oaths one may incur the danger thereof.
3. How far the false oath must appear to have been prejudicial to some person.

As to the first of these particulars, *viz.* How far the very words of the statute must be pursued.

2. Leon. 211. 214. Shower 190.

Stat. 17. It hath been holden, that in every prosecution on this statute, the words thereof must be exactly pursued, and therefore that an indictment or action on the said statute,

rute, alledging that the defendant deposed such a matter *falso et deceptivè*, or *falso et corruptè*, or *falso et voluntariè*, without expressly saying that he did it *voluntariè et corruptè*, is not good; and that such a defect cannot be supplied by adding the words *contra formam statuti*, or concluding *et sic voluntarium et corruptum commisit perjurium*. Also it hath been holden, that it is necessary expressly to alledge that the defendant was sworn, and therefore that it is not sufficient to say, that *talis per se sacro evangelio falso deposuit*. C.El. 263. 147. Savil 43. 3. Leon. 230. Hetley 12. Holt 534. Skinner 403. See Cox's case, Cases Cro. Law, 63.

Sec. 18. However, it hath been resolved, that it is not necessary to shew whether the party, who is accused of perjury, did take the false oath through the subornation of another, or without any such subornation, notwithstanding the words of the statute are, "If any person either by the subornation, unlawful procurement, sinister persuasion, or means of any other, or by their own act, consent, or agreement, commit wilful perjury, &c." for inasmuch as there is no medium between the two branches of this distinction, so that all perjury whatsoever must needs come within one of them, and it is no way material under which of them it doth come, it is a reasonable exposition to look on the said words as put into the statute *ex abundanti*, seeing they express no more than the law must needs have implied without them; from whence it follows, that they operate no more than if they had not been expressed, and consequently shall not oblige the prosecutor necessarily to pursue them, which would put him under the difficulty not only of proving the perjury, which alone is material, but also of shewing it to be within one of the branches of the said distinction, which is nothing to the purpose. 3. Bulst. 147. Vid. Sup. C. 10. §. 3.

As to the second of the abovementioned particulars, *viz.* In what kind of oaths one may incur the danger of this statute.

Sec. 19. It hath been resolved, that no one can be guilty of perjury within the meaning thereof, in any case wherein a man may not possibly be guilty also of subornation of perjury within the same statute; for it is very reasonable to give the whole statute the same construction; nor can it well be intended, that the makers thereof, who expressly inflict a greater penalty on subornation of perjury than on the perjury itself, should mean to extend the purview of the law in relation to what they esteemed the lesser crime, farther than in relation to that which they esteemed the greater; from whence it hath been argued and determined, that because that part of the statute which concerns subornation of perjury extends only to sub-

8. Co. 99.

C. Jac. 120.

3. Inst. 164.

subornation of perjury in " matters depending in suit by writ, action, bill, plaint, or information, in any wise concerning lands, tenements, or hereditaments, or goods, " chattels, debts, or damages, &c." therefore the following clause concerning perjury itself, though it be penned in more general words, shall come under the same restriction. And from hence it clearly follows, that no perjury upon an indictment or criminal information, can bring a man within the danger of the statute, because they are omitted in the abovementioned clause. Also upon this ground it seems easy to account for the judgment in *Price's case*, who being indicted for a perjury supposed to be committed by him in an information for the king, which as I suppose must be intended to have been a criminal one, was discharged upon an exception taken to the indictment; but if the information whereon the said perjury was supposed to have been committed, had been of a civil nature, I do not see any reason why it should not be as well within the meaning as it seems to be expressly within the words of the statute; for surely the opinion that the king cannot by indictment, which is his own proper suit, punish his own witness, who swears for him, cannot be agreeable to law; because however the perjury of such a witness may seem to tend to promote the king's interest in relation to the cause which happens to be in dispute, yet certainly it is as heinous a crime in its own nature, and as much an abuse to justice, and of the same ill consequence to the publick, and consequently as worthy of the king's resentment, as if it had been taken against him.

But he is punishable for the same by indictment at common law.
Bur. Mansf. 1289.

Sec. 20. Also it hath been resolved, that this statute extends to no other perjury except that of a witness, not only because the clause concerning subornation, to which the subsequent clause concerning perjury has a reference, relates to perjury by witnesses only, but also because the clause concerning perjury mentions only perjury committed by persons in their examinations *ad perpetuam rei memoriam*, or else in their depositions in some of the courts abovementioned, which in common speech are taken for such oaths only as are taken by a witness; and from hence it follows, that no one can come within the statute by reason of any false oath in an (a) answer to a bill in Chancery, or in (b) swearing the peace against another, or in a (c) presentative made by him as homager of a court-baron, or by reason of a false (d) wager of law, or for taking a false oath before (e) commissioners appointed by the king to make an enquiry concerning his title to certain lands.

(a) C. Eliz. 148.
2. Leon. 201.
Davison 84.
Yelv. 120.
(b) 2. R. Abr. 77.
(c) 2. Leon. 201.
(d) 2. Noy 7.
Finch 450.
(e) Moor 627.

Sec. 21. Also it hath been said, that he who makes a false affidavit against a man in a court of justice is not within this statute (+). But perhaps the books wherein this opinion is holden, ought to be intended only of such affidavits which no way relate to a cause depending in suit before such court; for if they be of such a nature, that either of the parties in variance be grieved, hindered, or molested in respect of their cause in such court by reason of the perjury; as where a trial is put off, or a judgment, or execution set aside upon a false affidavit; the offence seems to be not only within the meaning of the statute, but also within the very letter of it, unless the words "witnesses" and "depositions" are confined to so strict a signification, as to bear no kind of application to any other person or oaths; except those which are made use of upon the trial of the issue in question, for which I cannot find any good authority.

2. R. Abr. 77.
1. Roll. 79.
3. Keble 345.

Vide 2. Leon.
40.
1. R. Ab. 30. 41.

However, partly perhaps from this notion, and partly because the statute speaks expressly only of depositions in the courts abovementioned, it hath been questioned, whether a false oath before a sheriff upon a writ of enquiry of damages, be within the statute or not? But if it be considered, that the party to whose prejudice such a false oath is taken is as much aggrieved by it, as if it had been taken in the very court, and the principal judgment of the cause depends upon such an inquiry; and the depositions made before the sheriff, may as properly be said to be depositions in the court, by which the sheriff is commissioned to take the inquiry, as depositions taken before justices of *nisi prius*, upon a trial of an issue joined in a superior court, which are undoubtedly within the meaning of the statute; and also inasmuch as those who give evidence before a sheriff upon such an inquiry, may, in the common use of words, be as properly called witnesses, as those who give evidence before the court in which an issue is joined, it seemeth to be the more plausible opinion, that such a perjury is within the statute: but since it is disputable whether it be so or no, and it is certain that it is perjury at common law, and that in all cases whatsoever where a man takes a false oath, which is not perjury within the statute, but is looked on as perjury at common law, he is still punishable for it by indictment or information at the common law, it is certainly most adviseable to prosecute such an offender at the common law, and not upon the statute.

Obf. on the
Stat. 71.

See the authorities above
cited.

C. Jac. 1.

(+) If a person make an affidavit in the Common Pleas, and afterwards confess it to be false; the court may record his confession, and sentence him to the pillory; because any court may punish such an offence committed *in facie curiæ*, under this act of 5. Eliz. c. 9. Rex. v. Thorowgood, 8. Mod. 179.

As to the third particular, *viz.* How far the false oath must appear to have been prejudicial to some person.

Sect. 22. It hath been collected from the abovementioned clause, which giveth an action to the party grieved by the offences mentioned in the statute, that no false oath is within the meaning thereof, which does not give some person a just cause of complaint. And upon this ground it hath been said, that he who swears a thing which is true, but not known by him to be so, is not within the statute; because howsoever heinous his offence may be in its own nature, yet, when it proves in the event to be in maintenance of the truth, it cannot be said to give him a just cause of complaint, who would take advantage against another from his want of legal evidence to make out the justice of his cause.

3. Inst. 166.
Vid. sup. f. 6.
Hecley 97.
contra.

Vide sup. f. 3
& 3. Inst. 167.

Co. Ent. 164.
6. Mod. 168.
2. Roll. 76.
1. Keb. 452.
935. 941.
Raym. 202.
2. Leon. 12.
2. Roll. 427.
C. Car. 351,
352, 353.
1. Keb. 452.
C. Eliz. 423.

1. Keb. 935.
941.

Sid. 106.

2. Leon. 12.
3. Leon. 68.

Sect. 23. Also from the same ground it seemeth clearly to follow, that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it, for otherwise it cannot be said that any one was grieved, hindered, or molested by it; and therefore it is certain, that in every prosecution upon the statute, it is necessary to set forth the record of the cause wherein the perjury complained of is supposed to have been committed; and also to prove at the trial of the cause, that there is actually such a record, by producing the record itself, or a true copy thereof, which must agree with that which is set forth in the pleadings, without any material variance; for otherwise it cannot legally appear that there ever was such a suit depending, wherein the party might be prejudiced in the manner supposed. Also it seems to be agreed, that it is necessary not only to set forth the point wherein the false oath was assigned, but also to shew in what manner it conducted to the proof or disproof of the matter in debate between the parties. And it hath been adjudged, that an indictment setting forth a suit concerning the manor of *Dale*, and assigning a false oath concerning the manor "*manerium prædictum innuendo*," is not good, because it no otherwise appears, that the false oath did concern the manor of *Dale*, but by the *innuendo*, which is not a sufficient averment. Also upon the same ground it seems to be safest in a prosecution upon the statute for a false oath in Chancery, to set forth the bill and answer, that the plaintiff may appear to have been aggrieved by it. And for the same reason it seemeth also, that you ought in such a prosecution of a witness in Chancery to set forth the interrogatory in particular, and to shew how it was material. Also it hath been resolved, that as in an action on the statute

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tute brought by one person, it must appear that the false oath was prejudicial to the plaintiff, so in an action by more than one, it must appear to have been prejudicial to every one of the plaintiffs. And it hath been said, that it is not sufficient to shew that the false oath caused the court to make an award against the plaintiff, unless it also appear that such an award was prejudicial to him; and therefore where the plaintiff at a trial in ejectment challenged a juror, and proved his challenge by a false oath, by reason whereof the inquest was not taken, and consequently the possession of the defendant, who had a defeasible title, continued longer than it otherwise would have done, it was adjudged, that such a defendant cannot have an action on the statute against such witness, because in truth he gained an advantage by the perjury. Also it hath been holden, that it is not sufficient to shew that the perjury, for which an action is brought upon the statute, was actually prejudicial to the plaintiff, unless it be also shewn to have been made in some cause which may properly be said to have been depending in suit between him and the person for whom the witness was examined; and therefore it hath been holden, that where *A* brought a bill in Chancery against *B.* and the lord keeper, by an order, made *C.* to be as a party to the bill against *B.* and afterwards a commission went forth to examine witnesses between *B.* and *C.* upon which *D.* being produced as a witness on the part of *C.* swore directly for him against *B.* whereupon a decree was made against *B.* yet *B.* cannot have an action on the statute, because *C.* was not a party to the suit, but came in *à latere*, by an order; and it is said, that the words of the statute are, "where one" is grieved by a deposition in a suit between party and "party;" but perhaps the authority of this opinion may justly be questioned, not only because the words of the statute whereon it is grounded are mistaken, but also because the offence seems in truth to be both within the meaning and letter of the law, since thereby a person is grieved in respect of a cause depending in suit in a court mentioned in the statute: however there seems to be no doubt but that a perjury which only tends to increase or lessen the damages to be given to a plaintiff, is as much within the statute, as any perjury which goes directly to the point of the issue. Also it seemeth to be settled, that perjury in a cause wherein an erroneous judgment is given, is a good foundation of a prosecution upon the statute, while such judgment stands unreversed.

2. Leon. 46.

Yelv.

2. Leon. 193.

1. Keb. 9.

Raymond 74.

1. Sid. 148.

2. Keb. 718.

354.

1. Keb. 332.

† Sect. 24. It is enacted by 8. Geo. 1. c. 6. "That if
 " any person making such affirmation or declaration as is
 H 2 " appointed

Quakers,

"appointed by this act, shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which if sworn in the common or usual form, would have amounted to wilful and corrupt perjury; every person so offending shall incur and suffer such and the same pains, penalties, and forfeitures as are inflicted or enacted by the laws against persons convicted of wilful and corrupt perjury."

Probate of
wills. O. B.
1784. p. 909.

† *Seet.* 25. It is also enacted by 31. Geo. 2. c. 10. s. 24. "That whosoever shall willingly and knowingly take a false oath, or procure any person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration in order to receive the payment of any wages, pay, or other allowances of money, or prize-money, due, or that were supposed to be due, to any officer, seaman, or other person intitled, or supposed to be intitled, to any wages, pay, or other allowances of money or prize-money, for service due on board of any ship or vessel of his majesty, &c. or the executor, administrator, wife, relation, or creditor, of any such officer or seaman, or other person who has really served, or was supposed to have served on board of any ship or vessel of his majesty, &c. shall be deemed guilty of felony, and suffer death without benefit of clergy." (6)

(6) By 28. Geo. 2. c. 13. s. 14. for the relief of insolvent debtors, If any sheriff or other officer perjure himself, in taking the oaths directed by the act, he shall forfeit 500*l.*—And if the offence be committed by a prisoner, or other person enabled and intending to take the benefit of the act, it is felony without clergy.—*Vide* also 24. Geo. 3. c. 31. respecting perjury of freeholders at elections for Cricklade.

Form of the
indictment.

† *Seet.* 26. It is recited by 23. Geo. 2. c. 11. "Whereas by reason of difficulties attending prosecutions for perjury and subornation of perjury, those heinous crimes have frequently gone unpunished:" For remedy whereof it is enacted, "That in every information or indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath was taken, (averring such court, or person or persons to have a competent authority to administer the same) together with the proper averment or averments to satisfy the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, (7) information, indictment, declaration, or any part of any record or

(7) In perjury in an answer in Chancery, it is not necessary to prove the identity of the person who swore the oath; it is sufficient if the hand-writing be proved, and that the jurat was subscribed by the master as being sworn before him. *Rex v. Morris*, 2. Burr. 1189. See also *Rex v. James*, 1. Show. 397. and *Rex v. Brady*, Cases, Cro. Law. 49. 2015.

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“proceeding, either in law or equity, other than as afore-
 “said; and without setting forth the commission or au-
 “thority of the court, or person or persons before whom
 “the perjury was committed.”

+ *Sec. 27.* It is also further enacted by par. 2. “That
 “in every information or indictment for subornation of
 “perjury, or for corrupt bargaining or contracting with
 “others to commit wilful and corrupt perjury, it shall be
 “sufficient to set forth the substance of the offence charged
 “upon the defendant without setting forth the bill, answer,
 “information, indictment, declaration, or any part of any
 “record or proceeding either in law or equity, and with-
 “out setting forth the commission or authority of the
 “court, or person or persons before whom the perjury
 “was committed, or was agreed or promised to be com-
 “mitted.” (8)

(8) In general the Court will oblige the defendant to plead or to demur to even a defective indictment for this offence. 2. Hawk. c. 25. §. 146. They are also very cautious in granting a *certiorari* to remove it. 2. Hawk. c. 27. §. 28. And Lord Thurlow refused permission to amend an answer, where an indictment for perjury had only been threatened, even where the party, having no interest, could not be supposed to make the false oath intentionally. *Brown's Cases in Chancery*, 419. For it is the province of the grand jury to judge of the intention. *Vaux v. Lord Waltham*. And what the grand jury may find the Court will never expunge. B. R. H. 203.

+ *Sec. 28.* And the better to prevent great offenders The Court
 from escaping punishment by reason of the expence attend- may order per-
 ing such prosecutions, it is farther enacted by p. 3. “That- jured witness-
 “it shall and may be lawful to and for any of his majesty's- ses to be pre-
 “justices of assize, or *nisi prius*, or general gaol delivery, secuted.
 “or of any of the great sessions of Wales, or of the coun-
 “ties palatine; and they are hereby authorised (sitting the
 “court, or within twenty-four hours after) to direct any
 “person examined as a witness upon any trial before him
 “or them, to be prosecuted for the said offence of perjury,
 “in case there shall appear to him or them a reasonable
 “cause for such prosecution, and that it shall appear to
 “him or them proper so to do; and to assign the party
 “injured, or other person undertaking such prosecution,
 “counsel, who shall, and are hereby required to do their
 “duty without any fee, gratuity, or reward for the same.”
 Such prosecution is also exempted from tax or duty and
 fees of court, and the clerk of the assize is ordered to give
 the prosecutor a certificate of the same, being directed, with
 the counsel's names, &c.

Astornies,

† *Stat.* 29. And it is further enacted by 12. Geo. 1. c. 29.

f. 4. "That if any person who hath been, or shall be con-

victed of wilful and corrupt perjury, or subornation of

(9) Or of for-
gery or com-
mon barratry.

perjury, (9) shall act or practise as an attorney or soli-

citor, or agent in any suit or action, in any court of law,

or equity, in England, the judge or judges of the court

where such suit or action is or shall be brought, shall,

upon complaint or information thereof, examine the mat-

(10) Vide 2.

Bar. K, B. 34.

ter in a summary way (10) in open court, and if it shall

appear to the satisfaction of such judge or judges, that the

party hath offended contrary to this act, such judge or judges

shall cause such offender to be transported for seven years."

CHAPTER THE SEVENTIETH

OF FORGERY.

OF Forgery there are two kinds: First, By common law. *Britt. 16.*
 Secondly, By the statute. *Flota 2. c. 23.*

Sec. 1. FORGERY by the common law seemeth to be an offence in falsely and fraudulently making or altering any matter of record; or any other authentick matter of a publick nature, as a parish register, or any deed or will; punishable by fine and imprisonment, and such other corporal punishment as the Court in discretion shall think proper.

For the better understanding whereof I shall endeavour to shew,

1. In what cases the making or altering of a writing shall be said to be so far false and fraudulent, as to amount to forgery.

2. That a man may be guilty of forgery in respect of all the abovementioned writings, and no other.

Sec. 2. As to the first particular, it is said to be possible for a man knowingly to make a deed in his own name, and also to sign and seal it himself, which yet in judgment of law, may be no better than a downright forgery; as if a man make a feoffment of certain lands to *J. S.* and afterwards make a deed of feoffment of the same lands to *J. D.* of a date prior to that of the feoffment to *J. S.* in which case he is said to be guilty of forgery, because he knowingly falsifies the date, in order to defraud his own feoffee, by making a second conveyance which at the time he had no power to make. Also it is said, that his crime would have been no less, if by his conveyance he had passed only an equitable interest for good consideration, and had afterwards by such a subsequent antedated conveyance endeavoured to avoid it. Also in many other cases a writing may be said to be forged where neither the hand nor seal of any one are forged; as where one being directed to draw up a will for a sick person, doth insert some legacies therein of his own head; or where one finding another's name at the bottom of a letter at a considerable distance from the other

3. Inst. 169.
 Pulton 46.
 27. H. 6. 3.
 Moor 655.
 759.
 Noy 101.
 3. Inst. 170.
 Con. Dyera 88.

3. Modern 66.
8. Modern 192.
Fitzgib. 261.
12. Mod. 493.
496.
Strange 69.
3. Inst. 169.
Moor 619.

3. Inst. 169.

Vide Moor
619.

3. Modern 66.

Vide 2. R. Ab.
28, 29.
11. Coke 27.

Foster 116.

Pulton 46.
21. H. 6. 4.

Nov 99.
Moor 655.
Saik. 375.

writing, causes the letter to be cut off, and a general release to be written above the name, and then takes off the seal, and fixes it under the release; or where one inserts into an indictment the names of those against whom in truth it was not found; or where one makes any fraudulent alteration of the form of a true deed in a material part of it; as by making a lease of the manor of *Dale* appear to be a lease of the manor of *Sale*, by changing the letter *D.* into an *S.* or by making a bond for five hundred pounds, expressed in figures, seem to have been made for five thousand, by adding a new cypher. But *Sir Edward Coke* seems to say, that a deed so altered may more properly be called a *false* than a *forged* writing, because it is not forged in the name of another, nor his seal nor hand counterfeited. But I see no good reason why such an alteration of a deed should not as properly be called forgery, as the entire making of a new deed in another's name; for in both cases not only the fraud and villainy are the very same, but also a man's hand and seal are falsely made use of to testify his assent to an instrument, which after such an alteration is no more his deed than a stranger's. Also the notion of forgery doth not seem so much to consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation, which in truth and justice it ought not to have, as appears by the foregoing cases in this section, to most of which *Sir Edward Coke* himself seems to agree.

SECT. 3. But it seemeth to be clear, that he who writes a deed in another's name, and seals it in his pretence, and by his command, is not guilty of forgery, because the law looks on this as the other's own sealing.

SECT. 4. Also it hath been adjudged, that he shall not be punished for forgery who raseth out the word *hinc* out of a bond made to himself, and putteth in *merch*, because here is no appearance of a fraudulent design to cheat another, and the alteration is prejudicial to none but to him who makes it, whose security for his money is wholly avoided by it; yet it is said, that it would be forgery, if by the circumstances of the case it should any way appear to have been done with an eye of gaining an advantage to the party himself, or of prejudicing a third person. Also it is holden, that

that such an alteration, even without these circumstances, is a misdemeanor, though it be no forgery.

SecT. 5. It hath been resolved, that a man shall not be adjudged guilty of forgery for writing a will for another without any directions from him, who becomes *non compos* Moor 760. before it is brought to him; for it is not the bare writing an instrument in another's name without his privity, but the giving it a false appearance of having been executed by him, which makes a man guilty of forgery.

SecT. 6. It is said, that regularly a man cannot commit Moor 760. an act of forgery by a bare nonfeasance, as by omitting a legacy out of a will, which he is directed to draw for another. Yet it hath been holden by some, even in this very case, that if the omission of a bequest to one cause a material alteration in the limitation of a bequest to another, as where the omission of a devise of an estate for life to one man causeth a devise of the same lands to another to pass a present estate, which otherwise would have passed a remainder only, he who makes such an omission is guilty of forgery. In this case the first enquiry should be, with what intention the omission was made. *Noy 101.*

SecT. 7. It seemeth to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity, or not; and upon this ground it hath been adjudged, 1. Sid. 140. that the forgery of a protection in the name of *A. B.* as being a member of parliament, who in truth at the time was not a member, is as much a crime as if he were.

AND NOW I am to shew, in the second place, that a man may be guilty of forgery at common law in respect of any of the abovementioned writings, and of no other.

SecT. 8. AND FIRST it is clear, that one may be guilty thereof by the common law, by counterfeiting a matter of record; for since the law gives the highest credit to all records, it cannot but be of the utmost ill consequence to the publick, to have them either forged or falsified. 1. R. Ab. 65, 76. Yelv. 146. C. Eliz. 178. 3. Mod. 66. 8. Mod. 192. 12. Mod. 493. 496. Strange 69.

SecT. 9. SECONDLY, Also there seemeth to be no doubt but that one may be guilty of this crime by the common law, by forging any other authentick matter of a publick nature, as a (a) privy seal, or a (b) licence from the barons of the Exchequer to compound a debt, or a (c) certificate (a) 1. R. Abr. 68. C. Car. 326. 1. Jones 325. (b) 1. R. Ab. 65. 2. Bull. 137. (c) 1. Lev. 138

(a) 1. Sid. 144. tificate of holy orders, or a (a) protection from a parliament man.

(b) 1. R. Ab. 66. *Sect. 10.* **THURSDAY**, It is also unquestionable, that a Raymond 81. man may be in like manner guilty of forgery at common Owen 47. law, by forging a (b) deed; and surely there cannot be any 1. Sid. 278. reason to doubt, but that one may be equally guilty by forging a (c) will, which cannot be thought to be of less consequence than a deed. But I do not find this point any Dyer 302. It is where directly holden. how made felony by 2. Geo. 2. c. 25. Ante p. 210.

Sect. 11. As to other writings of an inferior nature, it (d) 1. Roll. 437. seems to have been generally laid down as a (d) rule, that 2. Sid. 16. 155. the counterfeiting of them is not properly forgery; (e) and 451. some have gone so far as to hold, that the forging another's 1. R. Abr. 66. hand, and thereby receiving rent due to him from his tenants, is not punishable at all; and therefore it cannot but be more safe to proceed against offences of this nature, as C. Eliz. 296. cheats than as forgeries: but surely it cannot be proved by any good authority, that such base crimes are wholly disregarded by the common law, as not deserving a publick prosecution; for the opinion in the books above cited, that they are punishable by no law, seems by no means to be maintainable, since many of them are most certainly punishable by force of 33. Hen. 8. c. 1. which is set forth at large in the following chapter. Neither can it be a convincing argument, that they are not punishable at common law, (f) because they are of a private nature, since deeds concerning private matters are also of a private nature, as much as other writings concerning such matters; yet no one will say, that the making a false deed concerning a private matter is not punishable at common law. But perhaps it may be reasonable to make this distinction between the counterfeiting of such writings, the forgery whereof hath been already shewn to be properly punishable as forgery, and the counterfeiting of other writings of an inferior nature, that the former is in itself criminal, whether any third person be actually injured thereby or not, but that the latter is no crime, unless some one receive a prejudice from it. (1)

(1) Vide Barnard, K. B. 10. 1. d. Raym. 1461. 2. Bac. Abr. 568. where these opinions were very fully considered in the case of the King v. John Ward, of Hackney; and in which it was determined, that to forge a release or acquittance for the delivery of goods, although not under seal, was forgery at common law. Vide also Lord Raym. 737. 5. Mod. 137. Raym. 81. and Strange 747.

Sect. 12. Thus far of FORGERY by common law.

And now I am to consider FORGERY *by the statute*, which Of forgery by depends upon 5. Eliz. c. 14. by which it is enacted, "That 5. Eliz. c. 14.
 " if any person or persons upon his or their own head and
 " imagination, or by false conspiracy and fraud with others,
 " shall wittingly, subtilly, and falsely forge or make, or
 " subtilly, cause, or wittingly assent to be forged or made,
 " any false deed, charter, or writing sealed, court roll, or
 " the will of any person or persons in writing, to the in-
 " tent that the state or freehold of inheritance of any
 " person or persons of, in, or to any lands, tenements,
 " or hereditaments, freehold or copyhold, or the right,
 " title, or interest, of any person or persons, of, in, or See Pulton 45,
 " to the same, or any of them, shall, or may be molested, 46.
 " troubled, defeated, recovered or charged; or shall pro-
 " nounce, publish, or shew forth in evidence any such
 " false and forged deed, charter, writing, court-roll, or
 " will, as true, knowing the same as false and forged, as is
 " aforesaid, to the intent above remembered (except being
 " an attorney, lawyer, or counsellor, he shall for his client
 " plead, shew forth, or give in evidence such false and
 " forged deed, &c. to the forging whereof he was not party
 " nor privy), and shall be thereof convicted either upon
 " action or actions of forgery or false deeds, to be founded
 " upon the said statute, at the suit of the party grieved, or
 " otherwise according to the order and due course of the Par. 15.
 " laws of this realm, &c. shall pay unto the party grieved
 " his double costs and damages to be found or assessed in Rex v. Mar-
 " that court where such conviction shall be, and also shall riot, 2. Show.
 " be set upon the pillory in some open market-town, or 6.
 " other open place, and there have both his ears cut off,
 " and also his nostrils slit and cut, and seared with a hot
 " iron, &c. and shall forfeit to the king the whole issues
 " and profits of his lands and tenements, and suffer per-
 " petual imprisonment, &c."

Stat. 13. And, by 5. Eliz. c. 14. f. 3. it is further enacted, "That if any person or persons, upon his or their
 " own head or imagination, or by false conspiracy or
 " fraud had with any other, shall wittingly, subtilly, and
 " falsely forge or make, or wittingly, subtilly, and falsely
 " cause or assent to be made and forged, any false charter,
 " deed, or writing, to the intent that any person or persons
 " shall, or may have, or claim any estate or interest for a
 " term of years, of, in, or to any manors, lands, tene-
 " ments, or hereditaments, not being copyhold, or any
 " annuity in fee simple, fee tail, or for term of life, lives,
 " or years, or shall, as is aforesaid, forge, make, or cause,
 " or assent to be made or forged, any obligation, or bill
 " obligatory, or any acquittance, release, or other dis-
 " charge

Lutw. 190.

“ charge of any debt, account, action, suit, demand, or
 “ other thing personal; or shall pronounce, publish, or
 “ give in evidence (except as before excepted), any such
 “ false or forged charter, deed, writing, obligation, bill
 “ obligatory, acquittance, release, or discharge, as true,
 “ knowing the same to be false and forged, and shall be
 “ thereof convicted by any of the ways and means aforesaid,
 “ he shall pay unto the party grieved his double costs and
 “ damages, to be found and assessed in such court, where
 “ the said conviction shall be had, and shall be also set
 “ upon the pillory in some open market town, or other
 “ open place, and there have one of his ears cut off, and
 “ also shall suffer imprisonment for one year, &c.”

A second of-
 fence felony
 without cler-
 gy.

Stat. 14. By 5. Eliz. c. 14. s. 7. and 8. it is further
 enacted, “ That if any person or persons being convict-
 “ ed or condemned of any of the offences aforesaid, by
 “ any of the ways and means above limited, shall after any
 “ such his or their conviction or condemnation, afterwards
 “ commit or perpetrate any of the said offences in form
 “ aforesaid, that then every such second offence shall be
 “ adjudged felony without benefit of clergy, saving to all
 “ persons other than the said offenders, and such as claim
 “ to their uses, all such rights, &c. which they shall have
 “ to any the hereditaments of any such person, so as it
 “ aforesaid convicted or attainted, at any time before, &c.
 “ saving also the dower of such offender’s wife, and the
 “ right of his heirs.”

Stat. 15. By 5. Eliz. c. 14. s. 10. “ All justices of oyer
 “ and terminer, and justices of assize, shall have power to
 “ inquire of, hear, and determine the offences aforesaid.”

Stat. 16. But by 5. Eliz. c. 14. s. 9. 12. and 16. it is pro-
 vided, “ This act, or any thing therein contained, shall not
 “ extend to any ordinary or his commissary, &c. for putting
 “ their seal of office to any will to be exhibited unto them,
 “ not knowing the same to be false or forged, or for writing
 “ of the said will or probate of the same, nor to any proc-
 “ tor, &c. of any ecclesiastical court, for the writing, set-
 “ ting forth, or pleading of any proxy made according to
 “ the ecclesiastical law, &c. for the appearance of any per-
 “ son being cited to appear in such court; nor to any
 “ archdeacon, or official, for putting their authentick seal
 “ to the said proxy or proxies, nor to any ecclesiastical
 “ judge for admitting the same; nor to any person who
 “ shall plead or shew forth any deed or writing exemplified
 “ under the great seal of England, or under the seal of any
 “ other authentick court of this realm; nor to any person
 “ who

“ who shall cause any seal of any court to be set to any
 “ such deed, charter, or writing enrolled, not knowing the
 “ same to be false or forged.”

In the construction of this statute the following points ^{1. Hale 682.}
 have been holden :

Sec. 17. FIRST, That a false customary of a copyhold ^{Dyer 322.}
 manor, made in parchment under the seals of several te- ^{3. Leon. 108.}
 nants of the manor, and containing in it divers false
 customs, apparently tending to the disherison of the lord,
 and falsely pretending by its title to be set forth by the
 consent of all the tenants, and allowance of the lord, is
 within the first branch of forgery mentioned in the statute,
 as being a sealed writing made to the intent to molest the
 inheritance of the lord.

Sec. 18. SECONDLY, That the forgery of a lease for ^{3. Inst. 17.}
 years, or of a grant of a rent-charge for years, in the name ^{Noy 42.}
 of one who is seized of a freehold or inheritance, is also
 within the said first branch of the statute, because the said
 branch is penned in general words extending to any mole-
 station whatsoever of such estate, without mentioning
 any estate or interest, in the claim whereof such molesta-
 tion shall consist; and from this ground it follows, that
 those words in the second branch of forgery mentioned in
 the statute, “ to the intent that any person shall claim any
 “ estate or interest for term of years, &c.” are meant only
 of such forgeries which relate to such an estate or interest *in*
esse before.

Sec. 19. THIRDLY, That the forgery of a will in writ- ^{Dyer 302.}
 ing of one possessed of such an estate, mentioning a bequest
 thereof, is within the said second branch of the statute, as
 being a false writing, made to the intent that some per-
 son may claim an estate for years, notwithstanding the
 said branch makes no express mention of a will, as the
 first doth.

Sec. 20. FOURTHLY, That the forgery of a lease of lands, ^{3. Leon. 170.}
 in *Ireland* is not within either of the branches of the statute.

Sec. 21. FIFTHLY, That the forgery of a deed con- ^{3. Leon. 170.}
 taining a gift of mere personal chattels, is also no way
 within the statute, the words whereof to this purpose are,
 “ If any person shall forge any obligation or bill obliga-
 “ tory, or any acquittance, release, or other discharge of
 “ any debt, account, action, suit, demand, or other thing
 “ personal.”

Sec.

See C. 42. & 62.

1. Fretman 398.

15. H. 7. 15.

2. R. Abr. 466.

Con. 3. Inf. 171.

Sec. 22. SIXTHLY, That the forgery of a statute-merchant or of a recognizance in the nature of a statute-staple, by acknowledging them in the name of another, are within the statute, as being obligations, because they must have the seal of the party, by the express words of the statutes, which appoint in what manner such statute or recognizance shall be taken: but that the forgery of the statute-staple is no way within the statute, because it needeth not the seal of the party, but only the seal of the staple provided for it.

3. Inf. 171.

1. Hale 685.

Sec. 23. SEVENTHLY, That he who is truly informed by another that a deed is forged, is in danger of the statute if he afterwards publish the same to be true, notwithstanding the words of the statute be, "If any one shall publish, &c. such false and forged deed, &c. knowing the same to be false or forged."

3. Inf. 172.

Sec. 24. EIGHTHLY, That the double damages to be awarded to the party grieved by a forged release of an obligation, &c. shall be governed by the penalty, and not by the true debt appearing in the condition.

3. Inf. 172.

Sec. 25. NINTHLY, That one who hath been convicted of publishing a forged deed, may become guilty of felony by forging another deed afterwards, as well as by publishing any such deed, notwithstanding the second offence be not of the very same nature with the first; for the words of the statute are, "If any person being convicted or condemned of any of the offences aforesaid, &c. shall after any such conviction or condemnation, afterwards commit any of the said offences."

11. Modern 3. Holt 326.

3. Keb. 356. 367.

3. Inf. 169.

Sec. 1. Keb. 849.

2. Keb. 129.

Other cases of this kind.

2. Keb. 245.

501. 532.

Farrelley 150.

Sec. 26. TENTHLY, That notwithstanding it be necessary in every prosecution upon the statute strictly to pursue the very words of it (for which cause it hath been resolved, that an indictment setting forth the forgery of a writing indented, without adding that it was sealed, is sufficient), yet there is no necessity that the translation of such words be made in proper classical Latin, so that it be intelligible; and upon this ground it hath been adjudged, that an indictment setting forth that the defendant *super caput suum proprium* did forge, &c. meaning thereby to express that he did it of his own head, is sufficient.

1. Ven. 23, 24.

Salk. 342. 375.

2. Lev. 111.

221.

3. Keble 353.

Sec. 27. ELEVENTHLY, That upon an indictment of trespass, forgery, and publication of a deed, a verdict finding the defendant guilty *de transgressionem et forgeria prædictis prout superius in indictmento supponitur*, is sufficient, because these words

words *de transgressionē prædictā* include the whole. Also perhaps such a verdict may be sufficient for another reason, because the offence is equally within the statute, and the punishment the very same, whether the party be guilty both of the forgery and publication, or of one of them only.

For other determinations upon this statute, vide *a. Bac. Abr. 571. Keb. 707. 748. 803. Barnard. K. B. 168. 441. 461.* and the case of the King *v. Crooke*, *Strange 901.* Besides this general act, a multitude of others, since the Revolution, when paper credit was first established, have, in a variety of instances, inflicted capital punishments on the crime of forgery; for which vide volume the first, chapter fifty-eight. *first*

CHAPTER THE SEVENTY-FIRST.

OF CHEATS.

CHEATS punishable by public prosecution, are of two kinds:

1. By the common law.
2. By statute.

Sec. 1. And first it seemeth, that those which are punishable at common law, may, in general, be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right by means of some artful device, contrary to the plain rules of common honesty (1); as by playing with false dice (a); or by (b) causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by (c) persuading a woman to execute writings to another, as her trustee upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment, &c.; or by (d) suppressing a will; or by (e) levying a fine in another's name, or (f) issuing out an execution upon a judgment for him, or acknowledging an action in his name, without his privity, and against his will; in which cases, by some good (g) opinions, the record may be vacated.

cited, but 2. R. Abr. 863. C. and 12. Co. 223. are contrary.

(1) Changing corn by a miller, and returning bad corn instead of it, is punishable by indictment; for being in the way of trade it is deemed an offence against the publick, 1. Sess. Cas. 217. So also to run a foot race fraudulently, and by a previous understanding with the seeming competitor to win money. 6. Mod. 42. So also if an indented apprentice enters himself as a soldier, and receives the bounty, and is discharged on his master's demanding him, he may be indicted. The King v. Jones, Cases in Cro. Law, 161.

Sec. 2. It (b) seemeth to be the better opinion, that the deceitful receiving of money from one man to another's use, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security.

Vide Wheat-
ley's case, Bur.
1125
Black. 273.

Rex v. Bower,
Coup. 323.

+ Therefore it hath been decided, that an indictment will not lie at common law against a person for selling beer short of the due and just measure, as sixteen gallons instead of eighteen gallons, for this is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness in not measuring the liquor upon receiving it, to see whether it held out the just measure or not; but if a tradesman uses false weights and measures in the general course of his dealing, or sell by them to any particular customer, it is an indictable offence, for this is a deception that common care and prudence is not sufficient to guard against. And upon this distinction it has been decided, that a pawn-broker who procures a gold watch chain of gold no way agreeing with the standard, but being according to the rate of twelve carats and two grains in the pound troy weight worse than the standard, and knowingly, exposes, and sells the same as and for a thing wholly made of gold, and agreeing with the said standard, is not indictable, for being neither a sale either by false weights or false measure, it is not a public offence, but a mere private imposition, against which a man's own common prudence ought to be a sufficient guard.

See the authorities cited in
sect. 1. and
the acts recited
infra, sect.
3. and 9.

Sect. . . Some of the abovementioned offences are punishable not only with fine and imprisonment, but also with farther infamous punishment (as cheating with false dice, especially if the offender be a common gambler), others are punishable with fine and imprisonment only, by the discretion of the Judges, which is regulated by the circumstances of each particular case; and some of them are made felonies by 21. Jac. c. 26. as appeareth from chapter forty-five.

+ II. OFFENCES of this kind by statute are those which are effected by means of a *false privy token*, or by means of a *false pretence*.

+ As to the first particular, *viz.* cheating another by means of a false privy token.

1. Hale 506.
2. Sess. Cas. 27.
Strange 866.
Bar. K.B. 298.
331.
Salkeld 379.
6. Modern 105.
111. 301. 311.
9. St. Tr. 67.

Sect. 4. This depends on the 33. Hen. 8. c. 1. which recites, that many light and evil-disposed persons, not minding to get their living by *trab*, but compassing and devising daily how they may unlawfully obtain and get into their hands and possession goods, chattels, and jewels of other persons, for the maintenance of their unthrifty living, and also knowing that if they came to any of the same goods, chattels, and jewels by *stealt*, that then they, being thereof lawfully convicted according to the laws of this realm, shall die therefore, have now of late falsely and deceitfully

ceitfully contrived; devised, and imagined *privity tokens* and *counterfeit letters* in other men's names, unto divers persons their special friends and acquaintances, for the obtaining of money, goods, chattels, and jewels of the same persons, their friends and acquaintances, by colour whereof the said light and evil-disposed persons have deceitfully and unlawfully obtained and gotten great substance of money, goods, chattels, and jewels into their hands and possession, contrary to right and conscience: for the reformation whereof IT IS ENACTED, "That if any person or persons shall
 " falsely and deceitfully obtain, or get into his or their
 " hands or possession, any money, goods, chattels, jewels,
 " or other things of any other person or persons, by co-
 " lour and means of any *privity false token*, or *counterfeit*
 " *letter* made in another man's name, to a special friend or
 " acquaintance, for the obtaining of money, &c. from such
 " person, and shall be thereof convicted, by witness taken
 " before the lord chancellor, or before the justices of assize,
 " or before the justices of peace of any county, city, bo-
 " rough, town, or franchise, in their general sessions, or
 " by action in any of the king's courts of record, every
 " such offender shall suffer such punishment by imprison-
 " ment, setting upon THE PILLORY, or otherwise by any
 " corporal pains, except pains of death, as shall be ap-
 " pointed by those before whom he shall be so convicted."

† *Sec. 5.* And by 33. Hen. 8. c. 1. f. 2. it is further enacted, "That as well the *justices of assize* for the time being,
 " as also two justices of peace in every county, whereof the
 " one to be of the *quorum*, may call and convene by pro-
 " cess, or otherwise to the said assizes, or general sessions,
 " any person being suspected of any of the offences afore-
 " said, and commit or bail him till the next assizes or ge-
 " neral sessions, there to be examined and further ordered
 " by their discretions."

Dalton 32.

† By 33. Hen. 8. c. 1. f. 3. it is also further enacted,
 " That justices of the peace in every city, borough, town,
 " and franchise within this realm, shall have the like jurif-
 " diction, power, and authority at their *general sessions*, and
 " otherwise, to do and execute all and every thing in all
 " points, as other justices of the assizes in their circuits, or
 " justices of the peace in the counties by virtue of this act,
 " saving to the *party grieved* by such deceit, such remedy,
 " by way of action or otherwise, of and for the same mo-
 " ney, goods, chattels, jewels, or other thing so obtained,
 " as he might have had if this act had never been made."

3. Inst. 123. *Sec. 6.* Sir Edward Coke is of opinion, that the offender cannot be fined in a prosecution upon this statute, because it is expressly ordained, that some corporal punishment shall be inflicted, and no other is mentioned; however, there is a precedent in *Croke's Reports*, by which it appears, that one convicted on such a prosecution hath been adjudged not only to stand on the pillory, but also to pay a fine of five hundred pounds, and to be bound with good sureties to his good behaviour.
- C. Car. 564.

† As to the second particular, *viz.* cheating another by means of a false pretence.

† *Sec. 7.* This depends on the statute 30. Geo. 2. where it is recited, that divers ill-disposed persons to support their profligate way of life, have, by various subtle stratagems and devices, fraudulently obtained divers sums of money, goods, wares and merchandizes, to the great injury of industrious families, and to the innumerable prejudice of trade and credit, AND ENACTED, "That all persons who knowingly and designedly, by *false pretence* or pretences, shall obtain from any person or persons, money, goods, wares, or merchandizes, with intent to cheat and defraud any person or persons of the same, shall on conviction be put in the pillory, or publicly whipped, or fined and imprisoned, or transported not exceeding the space of seven years, as the Court shall in discretion think fit."

vide an introduction to Ad-
ding. 1. S. p.
272.

† *Sec. 8.* It hath been determined, that these two statutes of 33. Hen. 8. c. 1. and 30. Geo. 2. c. 24. are made *in pari materia*; that the latter only enlarges the description of the offence given in the former; and that whatever has been determined in the construction of one of them, is a found rule of construction as to the other. And the following determinations have been made:

Rex v. Mason, 1. Term Rep. 526.

† *Sec. 9.* FIRST, That to bring an offender within the statute 33. Hen. 8. c. 1. there must be a *token used*; and therefore where one man went to the house of another, and pretended that such a person had sent him to receive twenty pounds, and received it, whereas such person did not send him, it was held no offence within the statute.

1. Burr. 355. Rex v. Munoz, 2. Stra. 1127.

† *Sec. 10.* SECONDLY, That the statute 30. Geo. 2. c. 24. extends to every case where a party has obtained money by falsely representing himself to be in a situation in which he was not, or any occurrence that had not happened to which persons of ordinary caution might give credit;

dit; and therefore, where *A.* falsely pretended to *B.* that one *C.* had made a bet of five hundred guineas on each side with a colonel in the army then at *Bath*, that *D.* would next day run a foot race, and under colour of letting *B.* go shares in a bet made on the said race, obtained, by such false pretence, twenty guineas from *B.* it was held within the statute; for this statute hath introduced another offence describing it in terms extremely general.

+ *Secl.* 11. THIRDLY, That the false token must be used; *Rex v. Brian*, and therefore, if a person endeavour, by a *counterfeit letter*, to defraud another of goods, and is apprehended on suspicion of such fraud before he has got the goods into his possession, he is not within the statute. *1. Self. Cases, 27.*

+ *Secl.* 12. FOURTHLY, That it is not sufficient to aver in an indictment on 33. Hen. 8. c. 1. that the offence was effected by a *false token*, or on 30. Geo. 2. c. 24. by a *false pretence*, but that it must shew what the false token in the first case, and the false pretence in the second, was. *Rex v. Munoz, 1. Self. Cases, 201. Rex v. Mason, 2. Term Rep. 581.*

+ *Secl.* 13. FIFTHLY, That where the pretence is conveyed by words spoken by one defendant in the presence of others who are acting in concert together, they may be all indicted jointly. *Rex v. Young, 3. Term Rep. 98.*

+ *Secl.* 14. SIXTHLY, That it is no objection in arrest of judgment, that the indictment contains several charges of the same nature in the different courts. *Rex v. Young, 3. Term Rep. 98.*

+ *Secl.* 15. SEVENTHLY, That a *certiorari* will not lie on the statute 30. Geo. 2. c. 24. to remove an indictment from the sessions. *Rex v. Smith, Cowp. 24.*

+ *Secl.* 16. By 16. Car. 2. c. 7. "If any person shall by any fraud, unlawful device or other ill practice in playing at cards, dice, tables, tennis, bowls, skittles, shovell-board; or by cock-fighting, horse-racing, dog-matches, foot-races, or other pastimes, or games, or by bearing a share in the stakes, or by betting on the side of such as shall play, act, ride, or run as aforesaid, win any sum or other valuable thing, he shall forfeit treble the value in the manner the act directs." *2. Abr. Eq. Caf. 184. Siderfin 344. 1. Levinz 244. Ld. Raym. 69. 2. Levinz 44. 4. Com. Dig. 70.*

+ *Secl.* 17. By 9. Ann. c. 14. "If any person shall by any fraud or shift, cozenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at cards, dice, tables, tennis, bowls, skittles, shovell-board, or by cock-fighting, horse-racing, dog-matches, foot-races, or other pastimes, or games, or by bearing a share in the stakes, or by betting on the side of such as shall play, act, ride, or run as aforesaid, win any sum or other valuable thing, he shall forfeit treble the value in the manner the act directs." *Vide Strange 1048. The King v. Look-up, where it was determined that the Court cannot set a fine upon the offender on a conviction upon this act; that the only judgment they can give is, that he is convicted, &c.*

“ cards, dice, tables, tennis, bowls, or any the games afore-
“ said, or bearing a share in the stakes, or betting on the
“ sides of such as do play, win any sum of money, or other
“ valuable thing, on conviction by information or indict-
“ ment, he shall forfeit to such as shall sue for the same,
“ five times the value, be deemed infamous, and suffer
“ corporal punishment as in cases of perjury.”

CHAPTER THE SEVENTY-SECOND.

OF CONSPIRACY.

FOR the better understanding the nature of Conspiracy,
I shall consider,

1. Who may be said to be guilty of Conspiracy.
2. In what manner such offenders are to be punished.

AS TO THE FIRST POINT, *viz.* Who may be said to be guilty of CONSPIRACY.

Sec. 1. There can be no better rule than the statute of 2. Inst. 562, 33. or rather 21. Edw. 1. the intent whereof was to make a Reg. 134. a, final definition of CONSPIRATORS, to which purpose it declares, "that conspirators be they that do confeder or bind 135. themselves by oath, covenant, or other alliance, that Geddb. 444. every of them shall aid and bear the other falsely and maliciously to indict, or cause to indict, or falsely to move Sec 2. Vol. of Reeves' Hist. of English Law, 239. and maintain pleas, and also such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved, and such as retain men in the country with livery or fees for to maintain their malicious enterprises, and this extendeth as well to the takers as to the givers, and to stewards and bailiffs of great lords, who by their feignoury, office, or power, undertake to bear or maintain quarrels, pleas, or debates that concern other parties than such as touch the estate of their lords or themselves."

Sec. 2. From this definition of conspirators it seems clearly to follow, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence, who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not; for the words of the statute seem expressly to include all such confederacies under the notion of conspiracy, whether there be any prosecution thereof or not. And if such a confederacy be within the letter of the statute, there seems to be no manner of reason to say, that they are not also within the meaning of it, since it is a high contempt of the law, barely to engage in such an association to abuse it, to serve the purposes of oppression and injustice. Neither can it be a severe construction which will bring a crime

crime so evidently contrary to the first principles of common honesty, within the meaning of a law, the words whereof do plainly seem to extend to it.

And therefore I cannot but *question the accuracy of that description of conspiracy which is given in the *Third Institute* (a), whereby the lawful acquittal of the party grieved is required to make the offenders guilty of this crime. It is true indeed, that a bare conspiracy to indict a man will not maintain a writ of conspiracy at the suit of the party grieved, because it doth not do him any actual damage. Also it must be confessed, that it is often laid down as a general rule, and taken for granted, that no such conspiracy is a good foundation for such a writ, unless the plaintiff be lawfully acquitted. And it is certain, that there is no formed writ of conspiracy in THE REGISTER for a malicious indictment or appeal, but what supposes such indictment or appeal to have been actually brought, and the party to have been legally discharged. From whence it follows, that no one can have the benefit of any such writ in THE REGISTER, who, upon a false accusation, is put to the trouble and vexation of being apprehended, examined, or committed, &c. without being ever indicted or appealed.

(a) 3. Inst. 174.
 Id. Ray. 378.
 10. Mod. 219.
 F. N. B. 114.
 1. Dan. Abr. 211. 213.
 S. P. C. 173.
 174. 175.
 B. Corone 89.
 B. Appeal 68.
 1. R. Abr. 310. 111. 114.
 9. Co. 56. 57.
 Register 134.
 1. Jon. 23. 94.
 Baskeld 21.
 6. Mod. 261.
 Bull. N. P. 13.
 10. Mod. 219.
 B. Corone 6.
 33. H. 6. 1. See S. P. C. 174. Vide 2. Inst. 407. 562. 1. Ventris 47.

However it is certain, that an acquittal by verdict is not always necessary to maintain such a writ; for it appears by THE REGISTER itself, that where one brought such a writ in the usual form, having in it the words *quousque acquietatus fuisset*, &c. against one who had been non-suited in a malicious appeal of felony brought against him, his writ was abated, because such a nonsuit would not make good the words *quousque acquietatus fuisset*, and yet he afterwards brought a new writ, wherein he used the words *quietus recessit*, instead of *acquietatus fuisset*, and recovered. And why may not a new writ as well be formed in any other case which is as much within the mischief of the statute as this? Or what colour can there be to say, that the malicious putting of a man to the unreasonable charge, scandal, and trouble of a criminal prosecution, which is so palpably groundless as not to have probability enough to induce a grand jury to find an indictment, should not be as good a foundation of complaint, and a grievance as much within the meaning of the statute, as the putting one to the charge and vexation of a groundless action, either in a temporal or spiritual court, for which it appears by THE (b) REGISTER that a writ of conspiracy doth lie, without making use either of the words *acquietatus fuisset*, or *quietus recessit*? Neither can it be said, that the opinion I contend for is wholly unsupported

(b) Reg. 134.
 F. N. B. 116.
 Fuch 306.
 2. Inst. 562.
 1. Keb. 254.

ported by authority, as appears from the *Poulterer's Case* in
(a) *Coke's Ninth Report*.

(a) 9. Co. 56.

However since it is certain, that an (b) *action on the case* (b) 1. Jon. 93, in the nature of such writ doth lie for a false and malicious prosecution, for any crime, whether capital or not capital, though it do not proceed to an actual indictment, or appeal, and that the same damages may be recovered in such an action as in a writ of conspiracy, it hath been thought needless to inquire, whether such writ may be maintained for such a prosecution or not.

357. 490. Latch 79. C. Car. 15. 2. Roll. 256. 237. 2. Bulst. 270, 271. 1. Roll. 107. 1. R. Abr. 112. 213. Ray 135. 180. Con. 1. Bulst. 185. Yelv. 116. Hutt. 49. C. Eliz. 563. 9. Co. 57. 563. 5. Mod. 394. 405. 1. Salk. 13. Danv. 208. Strange 691. 1. Ray. 374. Bull. N. P. 14. Holt 4. 150.

But howsoever the law may stand in relation to *writs of conspiracy*, there seems to be no manner of reason, that the stated form of such writs should any way restrain a proceeding by way of *indictment* or *information* against persons which are apparently within both the letter and meaning of the statute (1).

(1) In an action for a malicious prosecution, it is incumbent on the plaintiff to shew that the original suit, wheresoever instituted, is at an end; for otherwise he might recover in the action, and afterwards be convicted upon the original suit, Douglas 215. 2. Term Rep. 225; for this purpose he must produce and prove a copy of the acquittal on record, the substance of the evidence, the charges of acquittal, and the circumstances which shew the prosecution was malicious and without probable cause, Bull. Nisi Prius, 13, 14. But if the prosecution was for a misdemeanor, a copy of the record is not necessary to be granted by the Court to found the action, Morrison v. Kelly, 1. Bl. Rep. 385.

It seems certain, that a man may not only be condemned to THE PILLORY, but also be branded, for a false and malicious accusation; but since it doth not appear to have been solemnly resolved, that such an offender is indictable upon the statute, it seems to be more safe and advisable to ground an indictment of this kind upon the common law than upon the statute, since there can be no doubt but that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law; as where divers persons confederate (c) together by indirect means to impoverish a third person, or (d) falsely and maliciously to charge a man with being the reputed father (e) of

(c) 1. Lev. 62. 1. Mod. 185, 186. 1. Sid. 68. 1. Keble 254. (e) 1. Lev. 62. 1. Mod. 185, 186. 1. Sid. 68. 1. Keble 254. (e) 1. Sid. 174. 1. Keble 350. 9. Co. 56. 3. R. Abr. 77. See Moor 788. Salkeld 174. 1. Ventris 303, 304. 6. Mod. 185. 8. Mod. 322. 11. Mod. 55. Carth. 416. Foster 221.

a bastard child, or to maintain one another in any matter, whether it be true or false (2).

(2) Journeymen confederating and refusing to work unless for certain wages may be indicted for a conspiracy, notwithstanding the statutes which regulate their work and wages do not direct this mode of prosecution; for the offence consists in the conspiring, and not in the refusal, and all conspiracies are illegal, although the subject matter of them may be lawful, *Rex v. Journeymen Taylors of Cambridge*, 8. Mod. 11. 320. So also a bare conspiracy to do a lawful act to an unlawful end is a crime. Although no act be done in consequence thereof, 8. Mod. 321. And the fact of conspiring need not be proved on the trial, but may be collected by the jury from collateral circumstances, 1. Black. Rep. 392. *Strange* 144. And if the parties concur in doing the act, although they were not previously acquainted with each other, is conspiracy, *Lord Mansfield* in the case of the prisoners in the king's bench, Hil. y Term, 26. Geo. 3. See also *Rex v. Cope* and others, 1. *Strange* 144.

Sec. 3. Neither doth it seem to be any justification of a confederacy to carry on a false and malicious prosecution, that the indictment or appeal which was preferred, or intended to be preferred, in pursuance of it, was (a) insufficient, or that the court wherein the prosecution was carried on, or designed to be carried on, had no jurisdiction of the cause, or that the matter of the indictment did import no manner of scandal, so that the party grieved was in truth in no danger of losing either his life, liberty, or reputation. For notwithstanding the injury intended to the party against whom such a confederacy is formed, may perhaps be inconsiderable, yet the association to pervert the law in order to procure it, seems to be a crime of a very high nature, and justly to deserve the resentment of the law (b).

(a) *Palm*. 45. 3. *Keble* 141. *Style* 157. 1. *R. Abr.* 110. 9. *Coke* 26. *Yelv.* 46. 117. *C. Eliz.* 563. 2. *Bull.* 270. 271. *Cro. Jac.* 357. 1. *Roll. Rep.* 109. (b) *Reg.* 134. *F. N. B.* 116. 3. *Aff.* 13. 11. *H. 7.* 25. 26. 1. *R. Abr.* 112. 2. *Mod.* 52. 326. *Con.* 2. *Keble* 881. *W. Jones* 94. 2. *Cr.* 130.—Therefore on an indictment for wickedly and unlawfully conspiring to accuse another of taking hair out of a bag, without alleging it to be an unlawful and felonious taking, *Lord Mansfield* declared, that the indictment was well laid, for the gift of the offence is the *unlawful conspiring* to do an injury by a false charge. *Attorney's Case*. 1. *Black. Rep.* 368. *Burr.* 1320. *Cro. Cir. Assistant*, 216, 217. And it does not seem necessary in an indictment for this offence to specify any particular act, nor to state by what means the conspiracy was effectuated, for the means of the conspiracy are matters of evidence. Conspiracy is the gift of the charge; and to do a thing lawful in itself by conspiracy is unlawful, *Rex v. Eccles, Lancaster Summer assizes*, 1821. Vide also 1. *Salk.* 174. *Cro. Cir. Assistant*, 190. *in notes*, and 1. *Bilcs. Re*

(c) 9. *Co.* 55. 56. 57. 17. *Con.* 3. 28. 91. 5. *C.* 117. 71. 4. *Leon.* 107. *R. Abr.* 113. 114. 115. *Winc.* 128. 54. *Tatch* 79. 80. *Con.* 1. *R. Abr.* 10. *F. N. B.* 116. 27. B

Sec. 4. Neither (c) is it any plea for one who is prosecuted for such an unlawful confederacy, that nothing more was intended by him, but only to give his testimony in a legal course of justice against the party to whose prejudice such confederacy is supposed to have been formed; for notwithstanding it may be said, that it would be a great discouragement to legal proceedings, to make persons liable to a criminal prosecution, for barely intending to give their evidence, and it would be a pre-judging of a cause to try the truth of the testimony intended to be given in it before the cause itself is determined, yet the law will rather venture this

this mischief, than suffer so flagrant a villainy to go unpunished. However if there be any probability that the principal cause will ever be tried, it seems proper to apply to the Court to stay the trial of the confederacy until the merits of the principal cause be determined.

Sett. 5. Yet (a) it seems to be certain, that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a criminal matter, either upon a grand or petit jury; for since the safety of the innocent, and punishment of the guilty, doth so much depend upon the fair and upright proceeding of jurors, it is of the utmost consequence, that they should be as little as possible under the influence of any passion whatsoever. And therefore, lest they should be biased with the fear of being harassed by a vexatious suit for acting according to their consciences (the danger of which might easily be insinuated, where powerful men are warmly engaged in a cause, and thoroughly prepossessed of the justice of the side which they espouse), the law will not leave any possibility for a prosecution of this kind.

It is true indeed, that jurors were formerly sometimes questioned in THE STAR CHAMBER, for their partiality in finding a manifest offender not guilty; but this was always thought a very great grievance: and surely as the law is now settled by *Bushell's Case*, there is no kind of proceeding against jurors in respect of their verdicts in criminal matters allowed of at this day. As to the objection, that an attainr lies against a jury for a false verdict in a civil cause, and that there is as much reason to allow of it in a criminal one, it may be answered, that in an attainr, a man's property is only brought into question a second time, and not his liberty or life: and also it may be generally presumed, that a jury is likely to be equally influenced with the fear of an attainr from either of the contending parties; whereas if any such examinations of their proceedings were allowed in criminal causes, they might be often in great danger of one side, by incurring the resentment of a powerful prosecutor, and provoking him to call their conduct into question for their supposed partiality; but they could have little to fear from an injured criminal, who would seldom be in circumstances to make his prosecution formidable.

Sett. 6. And as the law has exempted jurors from the danger of incurring any punishment in respect of their verdict in criminal causes, it hath also freed the Judges of all courts of record from all prosecutions whatsoever, except in the parliament, for any thing done by them openly in such courts

(a) 27. Aff. 73.
27. Aff. 12.
9. H. 6. 44.
Bridg. 130,
131.
21. E. 3. 17.
47. E. 3. 17.
12. Co. 23, 24.
Reg. 134.
F. N. B. 115.
27. H. 8. 2.
S. P. C. 172,
173.
Ld. Ray. 469.
12. Co. 23, 24.

F. N. B. 105,
106.

Vaugh. 135.

12. Coke 24.
See Vaugh.
138, 139.
12. Ed. 4. 18.
21. Ed. 4. 67.
S. P. C. 173.

courts as Judges. For the authority of a government cannot be maintained, unless the greatest credit be given to those who are so highly intrusted with the administration of public justice; and it would be impossible for them to keep up in the people that veneration of their persons, and submission to their judgments, without which it is impossible to execute the laws with vigour and success, if they should be continually exposed to the prosecutions of those whose partiality to their own causes would induce them to think themselves injured. Yet if a Judge will so far forget the dignity and honour of his post, as to turn solicitor in a cause which he is to judge, and privately and extrajudicially tamper with witnesses, or labour jurors, he hath no reason to complain if he be dealt with according to the same capacity to which he so basely degrades himself.

12. Co. 24.

Certh 416.

1. R. Ab. 107.

112. 113 115.

B. Cor. 9.

SECT. 7. It appears not only from the words of the statute, but also from the plain reason of the thing, that no confederacy whatsoever to maintain a suit can come within the danger of the statute, unless it be both false and malicious. For it would be a most dangerous discouragement of all legal prosecutions, if those who engage in them upon a probable ground, should be in danger of being found guilty of so heinous a crime upon their not being able to bring their suits to their intended effect. And from hence it clearly follows, that if the defendants to an indictment or appeal in murder be found guilty of homicide *se defendendo*, or by misadventure, or get off by pleading the king's pardon, their prosecutors are in no danger of being punished as conspirators. And from the same ground it also follows, that if the defendants in a writ of conspiracy can shew a probable cause of suspicion, they shall be discharged; as where being accused of a conspiracy for indicting a person of larceny, they can shew that a larceny was committed at such a time and place, and that the party charged by them for such larceny was found by them at the same time and place, with suspicious circumstances; or where persons being charged with a conspiracy for indicting another for feloniously carrying away a woman with great violence, and numbers are able to prove that they saw the persons whom they so accused riding armed in a warlike manner, and following after those who truth actually did the felony, and that it was the common report of the country that they were all of the company. But some have said, that there is a necessity to plead such matter specially, and that it cannot be given in evidence on the general issue.

8. P. C. 173.

22. Aff. 77.

1. Leon. 107.

C. Eliz. 134.

Kew. 1183.

11.

27. H. 7.

Kew. 81.

C. 1. 174.

1. I. con. 17.

12. Mod. 208.

SECT. 8. It plainly appears from the words of the statute, that one person alone cannot be guilty of conspiracy within the

the purport of it; from whence it follows, that if all the defendants who are prosecuted for such a conspiracy be acquitted but one, the (a) acquittal of the rest is the acquittal of that one also. Also upon the same ground it hath been holden, that no such prosecution is maintainable against a (b) husband and wife only, because they are esteemed but one person in law, and are presumed to have but one will. But if two persons be indicted for a conspiracy, and one of them pleads to issue, and is found guilty, judgment shall be given against him, *Rex v. Kinnerley, and Moor*, 1. Strange 193. even although the other conspirator named in the indictment was dead before the indictment is preferred, *Rex v. Nichols and Bygrave*, 2. Strange 1227. 1. R. Abr. 111. (b) 38. Ed. 3. 3. S. P. C. 174.

And it is certain, that an *action on the (c) case* in the nature of a conspiracy may be brought against one only. Also (d) it hath been resolved, that if such an action be brought against several persons, and all but one be acquitted, yet judgment may be given against that one only.

(c) 1. R. Abr. 111, 112. C. Eliz. 701. 6. Mod. 170. 1. Saund. 228. Ray. 176. 180. 2. Kch. 497. Str. 144. 193. 1227. 1. Will. 210. 3. Mod. 408. Latch 80. 202. 12. Mod. 209. Buller N. P. 14.

As to THE SECOND POINT, viz. In what manner offenders of this nature are to be punished.

SecT. 9. It is clear, that those who are convicted of conspiracy at the suit of the (e) party shall only have judgment of fine and imprisonment, and to render to the plaintiff his damages. Also it is certain, that he who is convicted at the suit of the (f) king, of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he shall lose the freedom and franchise of the law (whereby he is disabled to be put upon any jury, or to be sworn as a witness, or even to appear in person in any of the king's courts); and also that his houses, lands, and goods, shall be seized into the king's hands, and his houses and lands estreated and wasted, his trees rooted up and rased, and his body imprisoned. And this is commonly called a villainous judgment, and is given by the common law, and not by any statute, as is said generally in some (g) books, to be the proper judgment upon every conviction of conspiracy at the suit of the king, without any restriction to such as endangered the life of the party. But I do not find this point any where settled (3).

(3) There has been no instance of the villainous judgment since the reign of Edward the Third. The usual mode of punishment at present is by pillory, fine, imprisonment, and surety for the good behaviour, *Burr. 996. 1027. Str. 196. Crown Cir. 248.* The quarter sessions have jurisdiction over this offence, *Finch 80. 8. Mod. 321. 3. Burr. 1320. Cro. Cir. Assistant, 129, 130. notiz.* And on the motion in arrest of judgment, the defendant must be personally present in court, *Strange 1227. Burr. 931.*

CHAPTER THE SEVENTY-THIRD.

OF LIBELS.

IN treating of Libels, I shall consider,

1. What shall be said to be a Libel.

2. Who are liable to be punished for it.

† 3. In what manner they are to be tried.

4. In what manner they are to be punished.

Carth. 405. 1. Salk. 211. Fitzgib. 121. 253. 2. Wilton 403. 2. Burr. 980.

See 3. Inst. 174.
9. Co. 53. 59.
Moor 813. 627.
March 131.
4. Co. 14.
Popham 133.
139.
Selden tit. Li-
bels.
1. Ventris 31.
Hob. 253.

AS TO THE FIRST POINT, *viz.* What shall be said to be a Libel.

SecT. 1. It seemeth, that A LIBEL in a strict sense is taken for a malicious defamation, expressed either in printing or writing, and tending either to blacken the memory of one who is dead (*a*), or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule.

12. Mod. 2193. (*a*) See Rex v. Toplam, 4. Term Rep. 126.

5. Coke 123.
5. Mod. 165.
166, 167.
Salk. 418.
Str. 422. 791.
12. Mod. 227.
Ld. Ray. 415.

SecT. 2. But it is said, that in a larger sense the notion of a libel may be applied to any defamation whatsoever, expressed either by signs or pictures, as by fixing up a gallows against a man's door, or by painting him in a shameful and ignominious manner.

5. Coke 125.
Skin. 123, 124.
Salkeld 418.
Ld. Ray. 431.
3. Keb. 378.

SecT. 3. And since the chief cause for which the law so severely punishes all offences of this nature, is the direct tendency of them to a breach of public peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt; and since the plain meaning of such scandal as is expressed by signs or pictures, is as obvious to common sense, and as easily understood by every common capacity, and altogether as provoking, as that which is expressed by writing or printing, why should it not be equally criminal?

1. Lev. 139.
5. Coke 125.
12. Coke 35.
Raymond 201.
Stra. 422. 898.
Savil 49.
Salk. 49. 418.
1. Sid. 270.
271.
3. Inst. 174.

Hobart 215. *Sec. 4.* And from the same ground it seemeth clearly to follow, that such scandal as is expressed in a scoffing and ironical manner, makes a writing as properly a libel, as that which is expressed in direct terms, as where a writing in a taunting manner reckoning up several acts of public charity done by one, says, "You will not play the Jew, nor the hypocrite," and so goes on in a strain of ridicule to insinuate, that what he did was owing to his vain glory, or where a writing, pretending to recommend to one the characters of several great men for his imitation instead of taking notice of what they are generally esteemed famous for, pitched on such qualities only which their enemies charged them with the want of, as by proposing such a one to be imitated for his courage, who is known to be a great statesman but no soldier, and another to be imitated for his learning, who is known to be a great general, but no scholar, &c. which kind of writing is as well understood to mean only to upbraid the parties with the want of those qualities, as if it had directly and expressly done so.

Sec. 5. And from the same foundation it hath also been resolved (a), that a defamatory writing expressing only one or two letters of a name in such a manner that, from what goes before and follows after, it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if strained to any other meaning, is a properly a libel, as if it had expressed the whole name at large, for it brings the utmost contempt upon the law, to suffer it justice to be eluded by such trifling evasions and it is as ridiculous absurdity to say, that a writing which is understood (b) by every the meanest capacity, cannot possibly be understood by a Judge and jury.

(a) *Hurt's Case, Trin 12 Annæ.*
 3. Mod. 68.
 12. Mod. 139
 Ld. Raym. 879.
 2. Atkin. 470

(b) On application for an information, some friend to the party complaining should by affidavit state that he has read the libel, and understands and believes it to mean the party. Note in 3 B. & A. 493.

Sec. 6. And from the same ground it farther doth appear, that it is far from being a justification of a libel, that the contents thereof are true (1), or that the person upon whom it is made had a bad reputation, since the greater appearance there is of truth in any malicious invective, so much the more provoking it is.

(2) In an action, the truth of a libel may be pleaded in justification, Hobb. 253. And even on a motion for an information, the truth or falsehood of the libellous matter will considerably influence the Court either to refuse or to grant it, Str. 498. And Friday therefore, except in particular cases is always required from the party applying, stating positively and directly that the contents of the imputed libel are not true. Rex v. Miles, Dougl. 271. Rex v. Bucken D., 1. Str. 498. Rex v. Bate, Dougl. 272. Or the Court will leave the injury to be remedied in the ordinary courts of justice by action or indictment, Str. 498. But the Court will not grant it is extraordinary remedy

medy by *information*, nor should a grand jury find an *indictment*, unless the offence be of such signal enormity that it may reasonably be construed to have a tendency to disturb the peace and harmony of the community. In such a case the public are justly placed in the character of an offended prosecutor, to vindicate the common right of all, though violated only in the person of an individual; for the malicious publication of even truth itself cannot in true policy be suffered to interrupt the tranquillity of any well-ordered society. This is a principle so rational and pure, that it cannot be tainted by the vulgar odium which has accompanied the derivation of the doctrine from the tyranny of the star-chamber; the adoption of it by the worst of courts can never weaken its authority, and without it all the comforts of society might with impunity be hourly endangered or destroyed. Vide Law of Libels.

Sec. 7. Nor can there be any doubt but that a writing which defames *private persons* only, is as much a libel as that which defames persons intrusted with a *public capacity*, inasmuch as it manifestly tends to create ill blood, and to cause a disturbance of the public peace.

5. Coke 125.
1. Sid. 219.
271.
3. Inst. 174.
Cro. Car. 173.
504.
2. Roll. 86.
3. Mod. 139. Comb. 65. Carth. 15. Hard. 470. Skin. 123. Keb. 773. St. Tr. 2. 977.

However it is certain, that it is a very high aggravation of a libel that it tends to scandalize the government, by reflecting on those who are intrusted with the administration of public affairs, which doth not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned in it to acts of revenge, but also has a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition.

Sec. 8. But it hath been resolved, that no false or scandalous matter contained in (a) a petition to a committee of parliament, or in (b) articles of the peace exhibited to justices of peace, or in any other (c) proceeding in a regular course of justice, will make the complaint amount to a libel, for it would be a great discouragement to suitors to subject them to public prosecutions, in respect of their applications to a court of justice. And the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavouring to make themselves their own judges, and to oblige them to refer the decision of their grievances to those whom the law has appointed to determine them.

Also (d) it seemeth to have been holden by some, that no want of jurisdiction in the court, to which such a complaint shall be exhibited, will make it a libel, because the mistake of the proper court is not imputable to the party, but to his counsel. Yet if it shall manifestly appear from the whole circumstances of the case, that a prosecution is intirely false, malicious, and groundless, and commenced, not with a design to go through with it, but only to expose the defendant's

Dyer 285. Yelv. 117. 2. Buft. 209. Godbolt 340. Palm. 145. 180. Vent. 23. 12. Coke 103. 2. Mod. 119. 2. And. 28. dant's character under the shew of a legal proceeding; I cannot see any reason why such a mockery of public justice should not rather aggravate the offence than make it cease to be one, and make such scandal a good ground of an indictment at the suit of the king, as it makes the malice of their proceeding a good foundation of an action on the case at the suit of the party, whether the Court had a jurisdiction of the cause or not.

See 1. Danv. Abr. 208, 209, 210, 211. and the foregoing Chapter of Conspiracy. Moor 627. But it is said, that no presentment of a grand jury can be a libel, not only because persons who are supposed to be returned without their own seeking, and are sworn to act impartially, shall be presumed to have proper evidence for what they do, but also because it would be of the utmost ill consequence any way to discourage them from making their inquiries with that freedom and readiness which the public good requires. From which considerations, it seems reasonable to exempt them from the fear of any kind of prosecution in respect of their inquiries, as has been shewn more at large in the chapter of Conspiracy.

Sect. 9. However it seems clear, that no writing whatsoever is to be esteemed a libel, unless it reflect upon some particular person (a).
(a) But see Rex v. Curl, 2. Str. 788. Rex v. Woolston, 2. Str. 834. Reg. v. Bedford, 2. Str. 789. Rex v. Watton, 2. Term Rep. 299. contra.

Kely. 258. Salk. 224. Ld. Ray. 486. 4. Read S. L. 154. Portef. 98. Sess. Ca. 29. 12. Mod. 149. 218. 220. Ld. Ray. 870. 2. Strange 934. Bar. K. B. 138. 166. See the Chapter concerning Surety for the good Behaviour, 1. Vent. 10. 16. And it seems, that a writing full of obscene ribaldry, without any kind of reflection upon any one, is not punishable at all by any prosecution at common law, as I have heard it agreed in the court of king's bench (2); yet it seems, that the author may be bound to his good behaviour, as a scandalous person of evil fame.

(2) It was so agreed in Read's Case, 11. Mod. 142.; but in the case of the King v. Curl, Mich. 1. Geo. 2. for publishing an obscene book, the Court were unanimous, that it is a temporal offence, and that Read's case was not law, Str. 788. 834. Also 4. Burr. 252.

As to THE SECOND POINT, viz. Who are liable to be punished for a libel.

Sect. 10. It is certain, that not only he who composes, or procures another to compose it, but also that he who publishes, or procures another to publish it, are in danger of being punished for it.
Almon's Case, 6. Buft. 2666. 9. Co. 59. Moor 267. 627. 813. Strange 77. B. N. P. 6. Fitzgibbon 47. Con. 9. Co. 59. L. Ray. 414. 417. 729. 2. Cam. Dig. 152. B. 2. 5. Co. 125. 12. Co. 35. Com. 359. 5. Mod. 167. 163. Vide Salk. 417, 418, 419. 646. 281. Carthew 405. to 410.

And

And it is said not to be material whether he who disperses a libel knew any thing of the contents or effect of it or not; for nothing could be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher would make him (3) safe in dispersing them. Moor 617. 9. Co. 59.

(3) But if a printer is confined in prison, to which his servants have no access, and they publish a libel without his privity, the publication of it shall not be imputed to him, Woodfall's case, Essay on Libels, p. 18. Sed vide Salmon's Case, B. R. Hilary 1777, and Rex v. Almon, 5. Burr. 2687.

Also it hath been said, that if he who had either read a libel himself, or hath heard it read by another, do afterward maliciously read or repeat any part of it in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. Moor 627. 813. 9. Co. 59. 5. Mod. 167.

Also it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove that he delivered it to a magistrate to examine it, in which case the act subsequent is said to explain the intention precedent. 9. Co. 59. Moor 813.

But it seems to be the better opinion, that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel till it was reduced to writing. 5. Mod. 167. Salk. 417.

Self. 11. Also it hath been resolved (a), that the sending of a letter full of provoking language to another, without publishing it, is highly punishable; and if the bare making of a libel be an offence, whether it be published or not, as it seemeth to be holden in some (b) books, surely the sending of it to the party reflected upon, must be a much greater crime, inasmuch as it so manifestly tends to a disturbance of the peace. (a) 1. Keb. 931. 2. Keb. 261. 58. Ld. Ray. 341. 417. 486. Skin. 123. 12. Mod. 218. 11. Mod. 99. 3. Bac. Abr. 498. 1. Lev. 139. 240. 12. Co. 34. Pop. 139. 136. Ray. 201. 1. Sid. 270. 444. 1. Mod. 58. Hob. 62. 215. 3. Inst. 174. 4. Inst. 180, 181. (b) 5. Mod. 167. 9. Co. 59. 1. Keb. 832. 12. Co. 35. See Fitzg. 47. 12. Vin. Ab. 229. Barn. 306. Sutt. Cafes, 33.

Self. 12. Also it seems to be agreed, that he who delivers a paper full of reflections on any person, in nature of a petition to a committee of parliament, to any other person except the members of parliament, may be punished as the publisher of a libel, in respect of such a dispersing thereof among those who have nothing to do with it. Keb. 832. 1. Saund. 133. 1. Lev. 240. 1. Sid. 414. 415.

S. 13. But it hath been resolved, that he who barely reads a libel in the presence (c) of another, without knowing Moor 813. 9. Co. 59.

it before to be a libel, or who hearing a libel read by another (a) laughs at it, or who (b) barely says, that such a libel is made upon such a person, whether he speak it with or without malice, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel publicly known, is an evidence of the publication of it.

Moor 627. *Sec. 14.* Also it hath been holden, that he who repeats
9. Co. 59. part of a libel in merriment without malice, and with no purpose of defamation, is no way punishable; but it seemeth, that the reasonableness of this opinion may justly be questioned; for jests of this kind are not to be endured, and the injury to the reputation of the party grieved is no way lessened by the merriment of him who makes so light of it.

15. Vin. Abr. *Sec. 15.* But it seemeth to be settled, that the bare print-
88. ing of a petition to a committee of parliament (which would
1. Keb. 832. be a libel against the party complained of, if it were made
1. Saund. 133. for any other purpose than as a complaint in a course of
1. Lev. 240. justice) and delivering copies thereof to the members of the
1. Sid. 414, 415. committee, shall not be looked upon as the publication of a
Skin. 124. libel, inasmuch as it is justified by the order and course of
Hard. 470. proceedings in parliament, whereof the king's courts will take judicial notice.

† As to THE THIRD POINT, *viz.* In what manner libels are to be tried.

† *Sec. 16.* It was held, that what is or is not a libel is
(c) 5. Burr. *matter of law* upon the face of the record, for the considera-
2666. tion of the Court (c), and that therefore on the trial of
(d) Rex v. an indictment for a libel, the only question for the consi-
Dean of St. deration of the jury was the fact of publishing, and the truth
Asaph, 3. T. of the *innuendoes* (d), and that if the paper was not a libel,
Rep. 428. the defendant after conviction might move the Court in ar-
notis. rest of judgment.
Rex v. Wi-
thers, 3. T.
Rep. 428.

† *Sec. 17.* But by the statute 32. Geo. 3. c. 60. it is re-
 cited, that doubts had arisen, whether on the trial of an
 “ indictment or information for the making or publishing
 “ any libel, where an issue or issues are joined between the
 “ king and the defendant or defendants, on the plea of not
 “ guilty pleaded, it be competent to the jury impanelled to
 “ try the same to give their verdict upon the whole matter
 “ in issue; and enacted, that on every such trial, the jury
 “ sworn to try the issue may give a general verdict of guilty
 “ or not guilty, upon the whole matter put in issue upon
 “ such

“ such indictment or information ; and shall not be required
 “ or directed, by the Court or Judge before whom such
 “ indictment or information shall be tried, to find the de-
 “ fendant or defendants guilty, merely on the proof of the
 “ publication by such defendant or defendants of the paper
 “ charged to be a libel, and of the sense ascribed to the same
 “ in such indictment or information.”

† *Sect.* 18. But by 32. Geo. 3. c. 60. f. 2. it is provided,
 “ That on every such trial, the Court or Judge before whom
 “ such indictment or information shall be tried, shall, ac-
 “ cording to their or his discretion, give their or his
 “ opinion and directions to the jury on the matter in issue
 “ between the king and the defendant or defendants, in like
 “ manner as in other criminal cases.”

† *Sect.* 19. By 32. Geo. 3. c. 60. f. 3. it is also provided,
 “ That nothing herein contained shall extend, or be con-
 “ strued to extend, to prevent the jury from finding a special
 “ verdict, in their discretion, as in other criminal cases.”

† *Sect.* 20. And by 32. Geo. 3. c. 60. f. 4. “ In case the
 “ jury shall find the defendant or defendants guilty, it shall
 “ and may be lawful for the said defendant or defendants to
 “ move in arrest of judgment, on such ground and in such
 “ manner as by law he or they might have done before the
 “ passing of this act ; any thing herein contained to the
 “ contrary notwithstanding.”

As to THE FOURTH POINT, *viz.* In what manner offen-
 ders of this kind are to be punished.

Sect. 21. There seemeth to be no doubt, but that they
 may be condemned to pay such fine, and also to suffer such
 corporal punishment, as to the Court in discretion shall seem
 proper, according to the heinousness of the crime, and the
 circumstances of the offender.

Cro. Car. 175.
 504.
 3. Inst. 174.
 2. Inst. 228.
 12. Co. 134.
 Stra. 934.
 8. Mod. 178.
 Fortesc. 37. 201.

CHAPTER THE SEVENTY-FOURTH.

OF THE OFFENCE

OF KEEPING

A BAWDY-HOUSE.

THE offence of keeping a bawdy-house being of so gross a nature, and there being also so few questions relating to it worth considering, I shall pass it over with these following observations:

FIRST, That it comes under the cognizance of the temporal law as a *common nuisance*, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness.

SECONDLY, That a *feme-covert* is punishable for this offence (1) as much as if she were sole, as more fully hath been shewn, chapter the first, section 12.

THIRDLY, That a lodger who keeps only a single room for the use of bawdry, is indictable for keeping a bawdy-house; but that the bare solicitation of chastity is not indictable.

FOURTHLY, That offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the Court in discretion shall seem proper.

2. Rol. 39. 79.
83.

4. Blac. Com.

29. 64. 167.

3. Burn. 95.

2. Ecc. Law.

Kitchen 11.

3. Inst. 205.

Salk. 382.

2. Ld. Ray. 197.

Dalt. p. 262.

Popham 208.

1. Sid. 168, 410.

2. Burr. 1232.

Salk. 384.

10. Mod. 63.

336.

(1) Therefore she may have an action for saying that she keeps a bawdy-house, Sayer 33.

CHAPTER THE SEVENTY-FOURTH,

CONTINUED.

OF THE OFFENCE

OF KEEPING

A DISORDERLY HOUSE.

† AS to the offence of keeping an unlicensed house. It is recited by 25. Geo. 2. c. 36. made perpetual by 28. Geo. 2. c. 19. "That whereas the multitude of places of entertainment for the lower sort of people is another great cause of thefts and robberies, as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants, and renewing their pleasures;" in order therefore to prevent the said temptation to thefts and robberies, and to correct as far as may be the habit of idleness, which is become too general over the whole kingdom, and is productive of much mischief and inconvenience, it is enacted, "That from and after the 1st day of *December 1752*, any "house, room, garden, or other place kept for publick "dancing, musick, or other publick entertainment of the "like kind, in the cities of *London* and *Westminster*, or "within twenty miles thereof, without a licence had for "that purpose, from the last preceding *Michaelmas* quarter- "sessions of the peace, to be holden for the county, city, "riding, liberty, or division in which such house, room, "garden, or other place is situate (who are hereby authorized and empowered to grant such licences as they in "their discretion shall think proper), signified under the "hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house or place: "and every such licence shall be signed and sealed by the "said justices in open court, and afterwards be publickly "read by the clerk of the peace, together with the names "of the justices subscribing the same; and no such licence

Unlicensed places of entertainment deemed disorderly houses.

"shall

Constables
may seize per-
sons.

Person keep-
ing the same
forfeit 100l.

Licensed
places to have
an inscription
over them, and
not be opened
before five in
the evening.

On breach of
conditions li-
cence revoked.

Places except-
ed.

" shall be granted at any adjourned sessions; nor shall
" any fee or reward be taken for any such licence. And it
" shall and may be lawful to and for any constable, or other
" person, being thereunto authorized, by warrant under
" the hand and seal of one or more of his majesty's justices
" of the peace of the county, city, riding, division, or
" liberty where such house or place shall be situate, to enter
" such house or place, and to seize every person who shall
" be found therein, in order that they may be dealt with
" according to law; and every person keeping such house,
" room, garden, or other place, without such licence as
" aforesaid, shall forfeit the sum of one hundred pounds to
" such person as will sue for the same, and be otherwise
" punishable as the law directs in cases of disorderly
" houses."

† *Sect. 3.* But by 25. Geo. 2. c. 36. s. 2. it is provided,
" That in order to give publick notice what places are li-
" censed pursuant to this act, there shall be affixed and kept
" up in some notorious place over the door or entrance of
" every such house, room, garden, or other place kept for
" any of the said purposes, and so licensed as aforesaid, an
" inscription in large capital letters, in the words follow-
" ing. *viz.* LICENSED PURSUANT TO ACT OF PARLIA-
" MENT OF THE TWENTY-FIFTH OF KING GEORGE THE
" SECOND; and that no such house, room, garden, or other
" place kept for any of the said purposes, although licensed
" as aforesaid, shall be open for any of the said purposes be-
" fore the hour of five in the afternoon; and that the af-
" fixing and keeping up of such inscription as aforesaid,
" and the said limitation or restriction in point of time,
" shall be inserted in, and made conditions of, every
" such licence; and in case of any breach of either of
" the said conditions, such licence shall be forfeited, and
" shall be revoked by the justices of peace in their next
" general or quarter sessions, and shall not be renewed;
" nor shall any new licence be granted to the same person
" or persons, or any other person on his or their or any
" of their behalf, or for their use or benefit, directly or in-
" directly, for keeping any such house, room, garden, or
" other place, for any of the purposes aforesaid."

+ *Sect. 4.* By 25. Geo. 2. c. 36. s. 3. it is also pro-
" vided, " That nothing in this act contained shall ex-
" tend, or be construed to extend, to the theatres royal
" in *Drury-lane* and *Covent-garden*, or the theatre com-
" monly called *The King's Theatre* in the *Hay-market*,
" or any of them; nor to such performances and
" publick

“ publick entertainments as are or shall be lawfully exercised and carried on under or by virtue of letters patent, or licence of the crown, or the licence of the lord chamberlain of his majesty’s household ; any thing herein contained notwithstanding.”

† *Sec. 5.* And by 25. Geo. 2. c. 36. f. 4. in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is enacted, “ That if any two inhabitants of any parish or place, paying scot, and bearing lot therein, do give notice in writing to any constable (or other peace-officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house, in such parish or place, the constable, or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to one of his majesty’s justices of the peace of the county, city, riding, division or liberty in which such parish or place does lie ; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of twenty pounds each, to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of thirty pounds, to prosecute with effect such person for such offence at the next general or quarter session of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet ; and such constable or other officer shall be allowed all the reasonable expences of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place ; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of ten pounds to each of such inhabitants ; and in case such overseer shall neglect or refuse to pay to such constable, or other officer, such expences of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of ten pounds and ten pounds, such overseers, and each of them, shall forfeit to the person entitled to the same, double the sum so refused or neglected to be paid.”

Constable’s duty upon notice of persons keeping a bawdy-house, &c.

The charges of prosecution, and rel. on conviction to each of the two inhabitants, to be paid by the overseers.

Person keep-
ing such baw-
dy-house, &c.
to be bound
over.

† *Stat. 6.* By 25. Geo. 3. c. 36. f. 6. it is further enacted,
“ That upon such constable or other officer entering
“ into such recognizance to prosecute as aforesaid, the
“ said justice of the peace shall forthwith make out his
“ warrant to bring the person so accused of keeping a
“ bawdy-house, gaming-house, or other disorderly house,
“ before him, and shall bind him or her over to ap-
“ pear at such general or quarter session or assizes, there
“ to answer to such bill of indictment as shall be
“ found against him or her for such offence; and such
“ justice shall and may, if in his discretion he thinks fit,
“ likewise demand and take security for such person's good
“ behaviour in the mean time, and until such indictment
“ shall be found, heard, and determined, or be returned
“ by the grand jury not to be a true bill.”

Constable
neglecting his
duty forfeits
2*l.*

† *Stat. 7.* And by 25. Geo. 2. c. 36. f. 7. “ In case such
“ constable shall neglect or refuse, upon such notice, to go
“ before any justice of the peace, or to enter into such re-
“ cognizance, or shall be wilfully negligent in carrying on
“ the said prosecution, he shall for every such offence forfeit
“ the sum of twenty pounds to each of such inhabitants so
“ giving notice as aforesaid.”

Who shall be
deemed keep-
er of such
bawdy-house,
&c.

† *Stat. 8.* And by 25. Geo. 2. c. 36. f. 8. it is recited,
“ That whereas, by reason of the many subtle and crafty
“ contrivances of persons keeping bawdy-houses, gaming-
“ houses, or other disorderly houses, it is difficult to prove
“ who is the real owner or keeper thereof, by which means
“ many notorious offenders have escaped punishment,”
and enacted, “ That any person who shall at any time here-
“ after appear, act, or behave him or herself as master
“ or mistress, or as the person having the care, govern-
“ ment, or management of any bawdy-house, gaming-
“ house, or other disorderly house, shall be deemed and
“ taken to be the keeper thereof, and shall be liable
“ to be prosecuted and punished as such, notwithstand-
“ ing he or she shall not in fact be the real owner or
“ keeper thereof.”

Evidence may
be given by in-
habitant, &c.

† *Stat. 9.* But by 25. Geo. 2. c. 36. f. 9. it is provided,
“ That upon any such prosecution against any person for
“ keeping a bawdy-house, gaming-house, or other disorderly
“ house, any person may give evidence against the defend-
“ ant, or on behalf of the defendant in such prosecution,
“ notwithstanding his or her being an inhabitant or pa-
“ rishioner of the said parish or place, or having entered
“ into such recognizance as aforesaid.”

† *Stat.* 10. And by 25. Geo. 2. c. 36. s. 10. it is further enacted, "That no indictment which shall at any time after the said first day of June be preferred against any person for keeping a bawdy-house, gaming-house, or other disorderly house, shall be removed by any writ of *certiorari* into any other court; but such indictment shall be heard, tried, and finally determined, at the same general or quarter session or assizes, where such indictment shall have been preferred (unless the court shall think proper, upon cause shewn, to adjourn the same), any such writ or allowance thereof notwithstanding."

CHAPTER THE SEVENTY-FIFTH.

OF COMMON NUISANCES.

OFFENCES under the degree of capital, more immediately against the subject, not amounting to an actual disturbance of the peace, which may be committed by private persons without any relation to an office, and which are of an inferior nature to the six kinds of offences last treated of, being neither infamous nor grossly scandalous, seem to be reducible to the following heads:

1. Such as more immediately affect the publick.
2. Such as more immediately affect the interest of particular persons.

Offences of this kind more immediately affecting the publick, are four-fold.

1. Common nuisances.
2. Monopolies.
3. Forestalling, ingrossing, and regrating.
4. Barratry.

And first of COMMON NUISANCES.

For the better understanding whereof I shall first consider them in general, and then descend to those relating to highways and publick houses, which seem to be the most remarkable general heads of this offence.

As to common nuisances in general I shall consider,

1. What shall be said to be a common nuisance.
2. How it may be removed.
3. How it may be punished.

As

As to THE FIRST POINT, viz. What shall be said to be a common nuisance.

2. R. Abr. 83. *Señ. 1.* It seems, that a common nuisance may be defined to be an offence against the publick, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires.

2. R. Abr. 83. *Señ. 2.* But annoyances to the interest of particular persons are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them.

2. Sid. 209. *Señ. 3.* And from hence it clearly follows, that no indictment for a nuisance can be good, which lays it to the damage of private persons only; as where it accuses a man of (a) surcharging such a common; or of (b) inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a (c) water-course running to the mill of *J. S. ad grave damnum J. S. et tenentium suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 2. Burr. 259. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 6. Modern 453. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 2. Wilton 57. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 (b) 27. Aff. 6. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 2. R. Abr. 83. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 C. Eliz. 90. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 (c) 2. R. Ab. 83. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 1. Vent. 26. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 (d) 2. R. Ab. 83. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 (e) 1. Med. 107. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 (f) 1. Roll. 406. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 3. Keb. 28. 284. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 C. Eliz. 414. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 C. Jac. 382. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 1. Saund. 115. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 C. Eliz. 148. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 2. Keb. 461. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 2. Leon. 183. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 184. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*
 9. Coke 113. *tum suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave (d) damnum*, or (e) *detrimen-*

27. Aff. 16. 20. *Señ. 4.* Also it is said, that the law hath so tender a regard for the interest of the king and of religion, that an indictment for doing a thing which plainly appears immediately to tend to the prejudice of either of them, is good, though it does not expressly complain of it as a common grievance; and upon this ground it hath been resolved, that an indictment for converting the king's money to one's own use is good, without more. And upon the same foundation also it hath been holden, that an indictment for breaking and digging up the wall of the church of such a town *ad nocumentum burgi ligeorum domini regis* is good.

SECT. 5. Also it hath been said, that an indictment of a common scold, by the words "*communis rixatrix*," which seem to be precisely necessary in every indictment of this kind, is good, though it conclude "*ad commune nocumentum diverforum*" instead of "*omnium*," &c. perhaps for this reason, because a common scold cannot but be a common nuisance. And upon the like ground it seems that it may probably be argued, that an indictment for laying logs in the stream of a navigable publick river, "*ad nocumentum J. S.*" may be maintained, because it cannot but be a common nuisance. And if the law be so in this case, why should not also an indictment setting forth a nuisance to a way, and expressly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude "*in nocumentum diverforum ligorum*," &c. without saying "*omnium*;" for why should such a conclusion be more necessary in an indictment for one kind of nuisance than for any other? And perhaps the (a) authorities which seem to contradict this opinion, might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nuisance was alledged, were a highway, or only a private way; and therefore that it shall be intended from the conclusion of the indictment that it was a private way.

SECT. 6. There is no doubt but that *common bawdy-houses* are indictable as common nuisances. Also it hath been said, that all *common stages* for rope-dancers, and also all *common gaming-houses*, are nuisances in the eye of the law, as hath been more fully shewn in the foregoing chapter; not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood.

SECT. 7. Also it hath been holden, that a *common play-house* may be a nuisance, if it draw together such numbers of coaches or people, &c. as prove generally inconvenient to the places adjacent. And it seems to be a proper distinction between play-houses and the nuisances mentioned in the foregoing section, that play-houses, having been originally instituted with a laudable design of recommending virtue to the imitation of the people, and exposing vice and folly, are not nuisances in their own nature, but may only become such by accident, whereas the others cannot but be nuisances.

(a) 2. R. Abr.
138. 139. 263.
2. Roll. 4. 30.
C. Jac. 382.
291.
Moore 238.
1. Roll. 136.
201.
Poph. 243.
Con. & Co. 104.
(b) F. N. B. 2.
c.
(c) 16. E. 4.
7. b.
Godh. 259.
(d) *Quere*
Moore 380. &
242.
C. Eliz. 548.
N. B. For the
nuisance of
keeping pige-
ons, vide 1.

Seft. 8. It hath been resolved, that neither an old nor a new (a) dove-cote, whether it were erected by the lord of a manor, or one of his tenants, is a common nuisance; for if a dove-cote were a common nuisance, it could never become lawful by any licence or prescription whatsoever, because every nuisance is a *malum in se*; but it is certain, that a dove-house may be justified by a prescription; and that it is so far countenanced by the law, as to be (b) demandable in a *præcipe* before any land whatsoever which is not built upon, and that the owner may justify the taking another's (c) hawk, which he shall find at his dove-house, flying at his pigeons (d); and from hence it seems clearly to follow, that though a tenant, who builds a dove-house without the licence of the lord of the manor, may perhaps be liable to an action on the case at the suit of such lord, whose prerogative is said to be incroached upon by the erecting such a house without his licence, yet he cannot be punished for it by a public prosecution.

Jac. 1. c. 27. and 2. Geo. 3. c. 29.

1. Jon. 221.
C. Car. 24.
1. Bull. 203.
2. R. Abr. 137.
Hil. 11. 23.
Str. 18. Ed. 2.

Seft. 9. But perhaps it may be argued, that if this reasoning be good, it will follow from the same ground, that a gate erected in a highway will be also no nuisance; because if it were, it could not be justified by any prescription, as it is agreed that it may be. But to this it may be answered, that the erecting of such a gate is therefore a nuisance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully entitled to; but where such a gate has continued time out of mind, it shall be intended, that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy.

1. R. Abr. 139.
Cont. 3. Mod.
138.
Cro. Car. 510.
Morley and
Pragnell,
1. Bur. 336.
1. Keb. 570.
Vide 1. Dany.
173. 174.
Balk. 458. 460.
Hutt. 136.
Palmer 536.
Ventris 26.
1. Id. Ray.
1163.

Seft. 10. It hath been holden, that it is no common nuisance to make candles in a town, because the needfulness of them shall dispense with the noisomeness of the smell. But the reasonableness of this opinion seems justly to be questionable, because, whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town; and surely the trade of a brewer is as necessary as that of a chandler; and yet it seems to be agreed, that a brew-house, erected in such an inconvenient place wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance; and so in the like case may a glass-house or swine-yard.

Str. 11. It seems certain, that it is a common nuisance *Noy* 403. to divert part of a public navigable river, whereby the current of it is weakened, and made unable to carry vessels of the same burthen as it could before. Also it hath been holden to be a common nuisance to divide a house in a town for poor people to inhabit in, by reason whereof it will be more dangerous in the time of infection of the plague (1). 3. K. b. 640. 759. 11. Modern 3. Finz. 179. a.R. Abr. 139. 1. Lut. 169.

(1) Or to make great noises in the night with a speaking trumpet, to the disturbance of the neighbourhood, *Str.* 704. Or permitting a house near the highway to continue in a ruinous condition, *Salk.* 357. Or laying timber in a public river, although the soil on which it is laid belong to the party, provided it obstructs the necessary intercourse, 3 *Bac. Ab.* 686. *Str.* 1247. Or to place a floating dock in the river, although beneficial in repairing ships, *Surry* assizes at Kingston, 1785. Or to travel with a cart on a common pack or horseway, and by plowing it up to render the use of it inconvenient, 6 *Mod.* 145. Or to put a ship of 300 tons into Billingsgate dock; for although it is a common dock, it is only for the reception of small vessels freighted with provisions for the London market, 2 *Hawk.* c. 25. f. 35. Or to manufacture acid spirit of sulphur, vitriol, or aqua fortis, in the vicinity of dwelling-houses, 1. *Burr.* 313. Vide also 13. *Ed.* 1. c. 24. 12. *Rich.* 2. c. 13. 2. *W. & M.* f. 2. c. 8. 30. *Geo.* 2. c. 22. 31. *Geo.* 2. c. 17. respecting nuisances in the cities of London and Westminster.

But the fears of mankind, however reasonable, will not create a nuisance; therefore it is no nuisance to erect a building for the purposes of inoculation, 3. *Atkyns* 21. 226. 250. Nor to lay bricks in the river Thames in the party's own fishery, 3. *Burr.* 177. Nor to violate a public law, *Black. Rep.* 570. Nor to stop up a prospect, 3. *Salk.* 247. 459. *Cro. Eliz.* 118. And whether coney burrows are a nuisance, see 1. *Burr.* 259. 6. *Mod.* 453. See also 11. *Mod.* 7. and 8.

† By 9 & 10. *Will.* 3. c. 7. it is enacted, "That it shall not be lawful for any person to make, or cause to be made, or to sell or utter, or offer or expose to sale any fireworks, or any cakes, moulds, or implements for making the same, on pain of 5*l.* on conviction before one magistrate, on the oath of two witnesses. Or for any person to permit or suffer fireworks to be cast, thrown, or fired from out of or in his, her, or their house, lodgings, or habitations, or from, out of, or in any part or place thereto belonging or adjoining, into any public street, highway, road, or passage, on pain of 20*l.* on conviction as aforesaid. Or for any person to cast, throw, or fire, or to be aiding or assisting therein, on pain of 20*l.* and that every such offence is and shall be adjudged a common nuisance." Of nuisances in making fireworks.

† By 10 & 11. *Will.* 3. c. 17. it is also enacted, "That all mischievous games called lotteries, and all other lotteries, are common and public nuisances, and that all grants, patents, and licences for such lotteries, or any other lotteries, are void and against law; and whoever shall exercise, keep open, shew, or expose to be played at," Of nuisances by erecting lotteries, &c.

"at, drawn at, or thrown at, or shall draw, play, or throw
 "at any such lottery, or other lotteries, either by dice,
 "lots, cards, balls, or any other numbers or figures, or
 "any way whatsoever, shall forfeit 500*l.* for every offence,
 "one third to the king, one third to the poor, and the
 "other third, together with double costs, to the party that
 "shall inform and sue for the same, and the parties shall
 "also be prosecuted as common rogues. And whoever
 "shall play, throw, or draw at any such lotteries, shall for-
 "feit 20*l.* in manner aforesaid."

Of nuisances
 by bubbling
 the publick.

† By 6. Geo. 1. c. 18. s. 19. it is also enacted, "That all
 "undertakings, attempts, and projects by public sub-
 "scriptions, for adventuring in certain schemes of com-
 "merce, tending to the common grievance of his majesty's
 "subjects, or a great number of them, and the receiving
 "and paying of any money upon such subscriptions, &c.
 "and more particularly the presuming to act as a body
 "corporate, or to raise transferrable funds, or pretending
 "to act under any charter formerly granted from the crown
 "for any particular or special purpose therein expressed, by
 "persons making or endeavouring to make use of such
 "charter, for any such other purpose not thereby intended,
 "and all acting or pretending to act under any such obsolete
 "charter, &c. &c. shall be deemed a public nuisance and
 "nuisances, the offenders made liable to such fines, penal-
 "ties, and punishments as are inflicted on a conviction
 "for common and public nuisances, and moreover to any
 "of the pains and penalties of *præmunire*."

Gaywood's
 Case, Strange
 472.

† It has been determined on this statute, that the Court
 has a discretionary power to inflict all, or only some, of
 the penalties of a *præmunire*, upon a conviction of the of-
 fence therein mentioned.

As to THE SECOND POINT, *viz.* How a nuisance may
 be removed.

§ 12. It seemeth to be certain, that any one may
 pull down or otherwise destroy a common nuisance, as a
 new gate, or even a new house erected in a highway, &c. ;
 for if one whose estate is, or may be, prejudiced by a pri-
 vate nuisance actually erected, as a house hanging over his
 ground, or stopping his lights, &c. may justify the enter-
 ing into another's ground, and pulling down and destroy-
 ing such a nuisance, whether it were erected before or since
 he came to the estate, surely it cannot but follow *à fortiori*,
 that any one may lawfully destroy a common nuisance : and
 2. R. Abr. 44. C. Car. 184.
 1. Jon. 221.
 11. Mod. 7, 8.
 Moor 374.
 2. R. Abr. 145.
 Salkeld 459.
 Yalverton 142.
 1. d. Raym. 264.
 5. Coke 101.
 9. Coke 54.
 Butrows 116.
 8. Roll. 9. 35. B. Nif. 14. 1. Jon. 221. Salkeld 458.

as the law is now holden, it seems, that in a plea justifying the removal of the nuisance, you need not show that you did as little damage as might be (a).

(a) *Quare vide*
Cooper v.
Strange, 680.

Marshall, 1. Burrow 259. and Rex v. Pappineau.

Sett. 13. It hath been adjudged, that if a river be stopped, to the nuisance of the country, and none appear bound by prescription to clear it, those who have the piscary, and the neighbouring towns who have a common passage and easement therein, may be compelled to do it.

37. Aff. 10.
2. R. Abr. 137.

As to THE THIRD POINT, viz. In what manner common nuisances may be punished.

Sett. 14. It is said (b), that a common scold is punishable by being put into the ducking-stool; and there is no doubt but that whoever is convicted of any other nuisance, may be fined and imprisoned.

(b) 6. Mod. 11.
178, 213.
1. R. Abr. 84.
2. Sett. Cas. 39.

Sett. 15. And it is said, that one convicted of a nuisance done to the king's highway, may be commanded by the judgment to remove the nuisance at his own costs; and it seemeth to be reasonable, that those who are convicted of any other common nuisance should also have the like judgment.

Vide Strange
686. Rex v.
Pappineau,
and the cases
there cited.

CHAPTER THE SEVENTY-SIXTH.

OF N U S A N C E S

R E L A T I N G T O

H I G H W A Y S.

AND now I am puticularly to consider such nufances as relate to HIGHWAYS, and PUBLICK HOUSES.

And for the better understanding of those which concern HIGHWAYS, I shall consider,

1. Such as relate to highways in general.
2. Such as relate to bridges in particular.

For the better understanding of nufances relating to highways in general, I shall examine the following particulars.

1. What shall be said to be a highway.
2. At whole charge and by whom it ought to be repaired
3. In what manner it is to be enlarged.
4. How the surveyors thereof shall be appointed.
5. How such surveyors ought to execute their office.
6. What shall be said to be a nufance to the highway.
7. How such nufances are to be removed and punished.
8. In what manner those who are charged with any offence relating to the highway, are to be proceeded against.
9. How persons so proceeded against may defend themselves.

As to THE FIRST POINT, viz. What shall be said to be a highway.

Co. Lit. 56

Comment. lib. 1. c. 1. de via regia are synonymous terms. Str. 14. 10. Mod. 383. Andrews 143.

SECT. 1. It is said that there are three kinds of ways: First, a footway, which is called in Latin, *iter*. Secondly, a pack and prime-way, which is both a horse and foot-way, and called in Latin, *aditus*. Thirdly, a cart-way, which contains the other two; and also a cart-way, and is called in Latin, *via* or *aditus*; and this is either common to all men, and then it is called, *via regia*, or belongs to some city or town, or private person, and then it is called, *communis privata*.

Palm. 389.

6. Mod. 244.

B. R. H. 315.

It seemeth that any one of the said ways, which is common to all the king's people, whether it lead directly to a market-town, or only from town to town, may properly be called a highway, and that any such cart-way may be called the king's highway, and that a nuisance in any of the said ways is punishable by indictment in the court-leet; for indictments for (a) stopping horseways, and (b) footways, have often been allowed; and where others have been quashed, no other reason has been given for it, but that the way was not called a common way or highway.

(a) C. Eliz. 63.

(b) Vent. 208.

2. Keble 178.

3. Keble 26.

6. Mod. 255.

(c) 27 Aff. 23.

Fitz. 279.

2. Com. Dig.

397.

And in (c) books of the best authority, a river common to all men is called a highway.

(d) Co. Lit. 66.

5. Ed. 4. 2.

(e) 3. & 4. W. & Mary 12.

4. Burr. 2091.

And it is laid (d) down as a general rule, that nuisances to any way common to all men, are inquirable in THE LEET, and horse-keepers are taken notice of by (e) parliament; and therefore there seems to be no reason why any way leading from village to village, which does not terminate there, but is also a thoroughfare to other towns, may not properly be called a common or highway, or why a nuisance therein should not be indictable, whether it directly lead to a market-town or not; for since such a way lies open to all the king's subjects, a nuisance therein (f) cannot but be a common nuisance, and if it be not punishable by indictment it would not be punishable at all, inasmuch as it (g) seems to be certain, that it is not punishable by action, because if one man might bring his action in respect of the possibility of the damage which he might receive from it, all other men may do the like, which would introduce a multiplicity of actions; and therefore the distinction which is taken in some (h) books concerning this matter, seems to be very reasonable, that every way from town to town may be called a highway, because it is common to all the king's subjects; but that a way to a parish-church, or to the common fields of a town, or to a private house, or perhaps to a village, which terminates there, and is for the benefit of the particular

(f) Kitchen 35.

Palmer 389.

2. Roll. 412.

(g) Mo. r. 160.

Cro. El. 664.

Co. Lit. 66.

27. H. 8. 27.

(h) 1. Vent. 189.

Kitchen 35.

1. Vent. 28.

3. Keble 28.

1. Ray. 114.

Salkeld 339.

particular

particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of which, as it seems, may have an action on the case for a nuisance therein. Co. Lit. 56.

+ But it hath been determined, that a street built upon a person's own ground, is a dedication of the highway so far only as the publick has occasion for it; viz. for a right of passage, and is not to be understood as a transfer of the absolute possession of the soil. Strange 1004.

See. - 2. It hath been holden, that if there be a highway in an open field, and the people have used, time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way, and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be founderous, the king's subjects may justify going upon the corn. 1. R. Abr. 390. Cro. Car. 366. Douglas 746. to 749.

+ So if one grant a way, and afterwards dig trenches in it to the hindrance of the grantee, he may fill them up again. But if a way which a man has, becomes not passable, or very bad, by the owner of the land tearing it up with his carts, so that the same be filled with water, yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. But in such case he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrongdoer, as near to the bad way as he can. Godb. 52.

+ But where a private way is spoiled by those who have a right to pass thereon, and not through the default of the owner of the land, it seems that they who have the use and benefit of the way ought to repair it, and not the owner of the soil, unless he is bound thereto by custom or special agreement. 2. Burr. 382.

+ So if I have a private way without a gate, and a gate is hung up, an action lies upon the case, for I have not my way as I had before. Litt. 267.

See. 3. It seemeth to be agreed, that an ancient highway cannot be changed without the king's licence first obtained upon a writ of *ad quod damnum*, and an inquisition thereon found, that such a change will not be prejudicial to the *infra*. C. Car. 266. 267. Vaugh. 341. 1. Burr. 465. vide note (3)

the publick; and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases.

C. Car. 267.

Yelv. 341, 142.

And it seemeth, that the king's subjects have not such an interest in such new way as will make good a general justification of their going in it as in a common highway; but that in an action of trespass brought by the owner of the land against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed, and the new one set out.

Also it is said, that the inhabitants are not bound to keep watch in such new way, or to make amends for a robbery therein committed, or to repair it.

1. Burr. 465.

† An owner of land over which there is an open road may inclose it by his own authority, but he is bound to leave sufficient space and room for the road, and he is obliged to repair it till he throws up the inclosure. But if he alter or change the road by the legal course of a writ of *ad quod damnum*, he is not obliged to repair the new road, unless the jury impose such a condition upon him, for otherwise it stands just as it did before; even though it was at first open, and should be directed by the jury to be inclosed.

1. Burr. 465.

† And a private act of parliament for inclosing lands, which vests a power in commissioners to set out new roads by their award, is equally strong, as to these consequences, as a writ of *ad quod damnum*.

C. Car. 267.

22. Affize 93.

1. R. Abr. 390.

Vide Taylor

Whitbread

Douglas 745.

SECT. 4. However it is certain, that a highway may be changed by the act of GOD; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees change its course, and go over different ground from that whereon it used to run, yet the highway continues in the new channel, in the same manner as in the old.

AS TO THE SECOND POINT, viz. At whose charge and by whom the highway ought to be repaired, I shall consider,

1. What provision is made by the common law concerning this matter.

2. What by statute.

As to the first of these particulars, *viz.* What provision has been made by the common law for the repairs of highways.

Sett. 5. It seems to be agreed, that of common right, the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are (*a*): † And therefore, if the inhabitants of a township, bound by prescription to repair the roads within the township, be expressly exempted, by the provisions of a road act, from the charge of repairing new roads to be made within the township, that charge must necessarily fall on the rest of the parish.

(*a*) 1. R. Abr. 890.

2. Term Rep. 106.

But it is said, that the tenants of the lands adjoining are bound to scour their ditches (*b*).

(*b*) March 26.
1. Vent. 90. 183.
189.
Sum. 144.
8. H. 7. 5.
Ld. Ray. 725.
2. Term. Rep. 232.

And there is no doubt but particular persons may be burdened with the general charge of repairing the highway in two cases, *viz.* in respect of an inclosure of the land wherein it lies; and in respect of a prescription.

And FIRST, a particular person may be bound to repair a highway in respect of an inclosure.

Sett. 6. As where the owner of lands not inclosed, next adjoining to the highway, incloses his lands on both sides thereof, in which case he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because, before the inclosure, the people used, when the way was bad, to go for their better passage, over the fields adjoining, out of the common track, which liberty is taken away by the inclosure.

1. R. Abr. 390.
C. Car. 366.
1. Siderfin 464.
Sed vide 1.
Burr. 461. to
266. *contra*.
Ld. Ray. 1170.

Sett. 7. Also it hath been holden, that if one inclose land on one side, which hath been anciently inclosed of the other side, he ought to repair all the way, but that if there be not such an ancient inclosure of the other side, he ought to repair but half that way.

1. Siderfin 464.

And it is said, that wherever one is bound to repair a highway in respect of an inclosure, and lays it open again as it was before, he shall be freed from the charge of repairing it.

† So in a writ of *ad quod damnum*, and inquisition found thereupon, after the person hath once made the road, (and it is not necessary the whole new road should go through

3. Atk. 772.

through his own foil) the parishioners ought to keep it in repair; because being discharged from the repairing of the old road, no new burthen is laid upon them; their labour is only transferred from one place to another. But if the new road lies in another parish, the person who sued out the writ, and his heirs, ought to keep it in repair; because as the inhabitants of the other parish gained no benefit from the old road being taken away, it would be imposing a new charge upon them, for which they enjoyed no compensation.

Rex v. Fleck-
now, 1. Burr.
461.

+ So also if a highway be inclosed by virtue of a special act of parliament for inclosing and dividing common fields, &c. it shall continue to be repaired by the parish or township, as it was before, unless otherwise directed by the act; for if he who inclosed the ground adjoining to the highway were obliged to repair, it might happen that the expence of repairing would be more than the value of his allotment.

SECONDLY. A particular person may be bound to repair a highway in respect of a prescription (*n*).

(*n*) Where the original of a way is accounted for, the prescription is destroyed.
Strange 909.
2. Saund. 160.
27. Affize 8.
21. Ed. 4. 38.
Brook, Prescription 49.
78.

Sec. 8. It is said, that a corporation aggregate may be compelled to do it by force of a general prescription, that it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation, in judgment of law, never dies, and therefore, if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea that such corporation have always done it out of charity; for what it hath always done, it shall be presumed to have been always bound to do.

Far. 54, 55.
21. Ed. 4. 31.
Mellw. 52, 3.
Litch. 206.
3. Salk. 77, 381.
6. Mod. 150.
190. 255.
Salk. 357. u.

But it is said, that a person cannot be charged with such a duty by a general prescription from what his ancestors have done, because no one is bound to do what his ancestors have done, unless it be for some special reason, as the having lands descended from such ancestors, which are holden by such like service, &c. Yet it seems, that an indictment charging a tenant in fee simple with having used of right to repair such a way *ratione tenuræ terræ suæ*, is certain enough, without adding, that his ancestors, or those whose estate he hath, have always so done, for that is implied in saying, "that he has always used to do it *ratione tenuræ suæ*."

Also an occupier, as such, though at will only, is indistinct for suffering a house standing upon the highway to be

be ruinous, &c. and the words "*ratione tenuræ, &c.*" if added, are plus.

Sec. 9. However, it seemeth certain, that whether a particular person be bound to repair a highway by inclosure or prescription, &c. yet the parish cannot take advantage of it upon the plea of "*not guilty*" to an indictment against them for not repairing it, but ought to set forth their discharge in a special plea (1).

1. Mod. 112.
3. Keble 304.
1. Ventris 256.
10 Mod. 150.
382.
12. Mod. 15.
108. 409.
Id. Ray. 725.
922, 1162. Strange 179.

(1) It must appear upon the face of the indictment by what right the charge is laid upon the particular division of any parish which is in one county only, 5. Burr. 272; as that they have repaired time out of mind, and. 276. B. R. H. 259.

As to the second particular, *viz.* at whose charge, and by whom the highway ought to be repaired by force of THE STATUTE.

For the better understanding whereof I shall examine,

1. Who are by statute compellable to work in the repairs thereof in their own persons, or by others.

2. Who may be assessed to a rate made for the defraying of the extraordinary charges of such repairs.

3. In what manner fines for non-repairs shall be levied and assessed.

4. In what manner the profits of lands settled in trust for the repairs of the highways shall be employed.

† As to THE FIRST POINT, *viz.* Who are compellable to work by statute in the repairs of highways.

Sec. 10. It is enacted by 13. Geo. 3. c. 78. f. 34. "That the surveyor to be appointed, as hereafter mentioned, together with the inhabitants and occupiers of lands, tenements, woods, tithes, and hereditaments, within each parish, township, or place, shall, at proper seasons in every year, use their endeavours for the repair of the highways, and shall be chargeable thereunto, as followeth."

Statute duty.

Sec. 11. By 13. Geo. 3. c. 78. f. 34. "Every person keeping a waggon, cart, wain, plough, or tumbrel, and three or more horses or beasts of draught used to draw the same, shall be deemed to keep a team, draught, or plough, and be liable to perform statute duty with the same, in the parish,

“ parish, township, or place where he resides, and shall
 “ fix days in every year, (if so many days shall be found
 “ necessary) to be computed from *Michaelmas* to *Michael-*
 “ *mas*, send on every day, and at every place, to be ap-
 “ pointed by the surveyor for the amending the highways
 “ in such parish, township, or place, one wain, cart, or
 “ carriage, furnished after the custom of the country, with
 “ oxen, horses, or other cattle, and all other necessities
 “ fit to carry things for that purpose, and also two able
 “ men with such wain, cart, or carriage; which duty to
 “ performed, shall excuse every such person from his duty
 “ in such parish, township, or place, in respect of all lands,
 “ tenements, woods, tithes, or hereditaments, not exceed-
 “ ing the annual value of fifty pounds, which he shall oc-
 “ cupy therein.”

† *Stat.* 12. And by 13. Geo. 3. c. 78. s. 34. “ Every per-
 “ son keeping such team, draught, or plough, and occupy-
 “ ing in the same parish, township, or place, lands, tenements,
 “ woods, tithes, or hereditaments, of the yearly value of fifty
 “ pounds, over and beyond the said yearly value of fifty
 “ pounds, in respect whereof such team-duty shall be per-
 “ formed; and every such person occupying to the yearly
 “ value of fifty pounds in any other parish, township, or
 “ place, besides that wherein he resides, and every other
 “ person not keeping a team, draught, or plough, but oc-
 “ cupying to the yearly value of fifty pounds, in any parish,
 “ township, or place, shall, in like manner respectively,
 “ and for the same number of days, find and send one wain,
 “ cart, or carriage, furnished with not less than three
 “ horses, or four oxen and one horse, or two oxen and
 “ two horses, and two able men, to each wain, cart, or
 “ carriage; and in like manner for every fifty pounds *per*
 “ annum respectively, which every such person shall further
 “ occupy, in any such parish, township, or place respec-
 “ tively, such wains, carts, or carriages, to be employed
 “ by the surveyor in repairing and amending the highways
 “ within the parish, township, or place where such lands,
 “ tenements, woods, tithes, or hereditaments, shall respec-
 “ tively lie.”

Contribution
money.

† *Stat.* 13. And by 13. Geo. 3. c. 78. s. 34. “ Every per-
 “ son who shall not keep a team, draught, or plough, but
 “ shall occupy under the yearly value of fifty pounds, in the
 “ parish, township, or place where he resides, or in any pa-
 “ rish, township, or place and every person keeping a team,
 “ draught, or plough, and occupying under the yearly va-
 “ lue of fifty pounds, in any other parish, township, or
 “ place, than that wherein he resides, shall respectively
 “ con-

“ contribute to the repair of the highways, and pay to the
 “ surveyor of such parish, township, or place respectively,
 “ in lieu of such duty, the sums following, *viz.* For every
 “ twenty shillings of the annual value of such lands, tene-
 “ ments, woods, tithes, or hereditaments respectively, the
 “ sum of one penny for every day's statute-duty which
 “ shall be required and called for by the surveyor of such
 “ parish, township, or place respectively, in every year not
 “ exceeding six days duty in the whole, as aforesaid, and
 “ every such person respectively shall, in like manner, pay
 “ the sum of one penny for every twenty shillings of the
 “ annual value which he shall occupy in any such pa-
 “ rish, township, or place respectively, above the annual
 “ value of fifty pounds, and less than one hundred pounds.
 “ and to for every twenty shillings that each progressive
 “ and intermediate annual value of twenty shillings, which
 “ he shall so occupy, shall fall short of the further increase
 “ of fifty pounds, in every parish, township, or place, where
 “ such lands, tenement, woods, tithes, and hereditaments
 “ shall respectively lie, for every day's statute-duty so to
 “ be required as aforesaid.”

1 *Stat* 14 By 13 Geo. 3. c. 78. s. 34. “ The said several How the con-
 “ sums shall be considered as compositions, and shall be paid tributions are
 “ to the surveyor of the parish, township, or place, in which to be received.
 “ they are charged, for the use of the highways therein, at the
 “ time such compositions are to be paid under the authority
 “ of this act, or within ten days after, or in default of such
 “ payments, such money shall be levied by distress and
 “ sale of the goods and chattels of the person or persons re-
 “ fusing to pay the same, in such manner as the justices
 “ for the neglect in performing the statute duty are hereby
 “ authorized to be levied and raised.”

† *Stat* 15 But by 13 Geo. 3. c. 78. s. 34. it is provided,
 “ That no person keeping such team, draught, or plough,
 “ and performing the duty with the same as aforesaid in the
 “ parish, township, or place where he resides, and not oc-
 “ cupying within the same to the yearly value of thirty
 “ pounds, shall be obliged to send more than one labourer,
 “ with such team, draught, or plough.”

† *Stat* 16 By 13 Geo. 3. c. 78. s. 35. it is further
 enacted, “ That every person who shall not keep a team,
 “ draught, or plough, but shall keep one or more cart, or
 “ carts, and one or two horses or beasts of draught only,
 “ used to draw in each of such carts upon the highways,
 “ shall be obliged to perform his statute-duty for the like
 “ number of days with such cart or carts, and horse or
 “ horse.”

The duty re-
 quired from
 persons who
 do not keep a
 team, but keep
 one or two
 horses used to
 draw, or who
 keep a coach,
 post chaise,
 &c.

"horses, or beasts of draught, and one labourer to attend each cart, or to pay for the lands, tenements, woods, and hereditaments, which he shall occupy, according to the rate aforesaid, at the option of the surveyor."

† *Sec. 17.* And by 13. Geo. 3. c. 78. f. 35. "Every person who shall keep a coach, post-chaise, chair, or other wheel-carriage, and not keep a team, draught, or plough, nor occupy lands, tenements, woods, tithes, or hereditaments, of the annual value of fifty pounds, in the parish, township, or place where he shall reside, shall pay to the surveyor one shilling in respect of every such day's statutory duty, for every horse which he shall draw in any such carriage, or shall pay according to the value which he shall occupy, according to the rate aforesaid, at the option of the surveyor."

Labour from occupiers of less than 4l. per annum.

† *Sec. 18.* And by 13. Geo. 3. c. 78. f. 35. "Every man inhabiting in any parish, township, or place, and being of the age of eighteen, and under the age of sixty years, not chargeable in any of the respects aforesaid for lands, tenements, woods, tithes, or hereditaments, of the yearly value of four pounds, or upwards, and not being *bona fide* an apprentice or menial servant, nor having performed the said duty, or paid the composition for the same, in any other parish, township, or place, for that year, shall, by themselves, or one sufficient labourer for every of them, upon every of the said days on which they shall be called forth by the said surveyor, together with the said other labourers, work and labour in the amendment of the said highways, as they shall be directed by such surveyor."

Three men to be sent, or 4d. to be paid.

† *Sec. 19.* And by 13. Geo. 3. c. 78. f. 35. "If the said teams, draughts, or ploughs, or any of them, shall not be thought needful by the surveyor on any of the said days, then every such person who should have sent any such team, draught, or plough, according to the directions aforesaid, shall, according to the notice to be given as herein-after directed, send unto the said work, for every one so spared, three able men, there to labour as aforesaid, or to pay to the said surveyor four shillings and sixpence in lieu thereof."

† *Sec. 20.* And by 13. Geo. 3. c. 78. f. 35. "All such persons as aforesaid shall respectively have and bring with them such shovels, spades, picks, mattocks, and other tools and instruments as are useful and proper for the purposes aforesaid."

And

+ *Sec. 21.* By 13. Geo. 3. c. 78. f. 35. "All the said persons and carriages shall diligently perform the work and labour to which they shall be appointed by such surveyor for eight hours in every of the said days, within such parish, township, or place, or in getting and carrying materials in and from any other parish, township, or place, to be employed in the repair of the highways of the parish, township, or place, for which they shall be required to perform such duty and labour as aforesaid." The duty work shall be done eight hours a-day.

+ *Sec. 22.* And by 13. Geo. 3. c. 78. f. 35. "If any person sending a team, as aforesaid, shall not send a sufficient labourer besides the driver (except as herein before mentioned), or if any such labourer, or driver, or any other labourer, or the driver of any cart, required by this act to perform statute-duty, as aforesaid, shall refuse to work and labour, during the time above mentioned, according to the direction of the surveyor; or if any driver shall refuse to carry proper and sufficient loads; it shall and may be lawful for such surveyor to discharge every such team, cart, or labourer, and to recover from the owner of every such team or cart the forfeiture which every such person or persons would have incurred by virtue of this act, in case no such team, cart, or labourer respectively had been sent." If labourers refuse to work, the surveyor may discharge the team and recover the penalty against the owner.

+ *Sec. 23.* By 13. Geo. 3. c. 78. f. 36. it is also further enacted, "That the surveyor, where the employment for teams is of such sort that two horses will be sufficient for one cart, or where a stand-cart with one horse shall be necessary, shall call upon any person liable to send a team, draught, or plough, by virtue of this act, who keeps one or more cart or carts, and three or more horses, to send such cart or carts, horse or horses, to perform his statute duty, as the surveyor shall find most convenient, and shall direct; and the surveyor shall allow every such stand-cart and one horse as half a team, and every cart and two horses as two-thirds of a team; and if a waggon shall be found necessary for any particular business, the surveyor may require the duty, or any part thereof, to be performed with such waggon, by any person who keeps one; which directions of the surveyor shall be observed, or the person liable to perform such duty shall forfeit such sum as the duty so required of him shall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough." Part of a team may be called for.

The surveyor
shall give *four*
days notice.

† *Stat.* 24. By 13. Geo. 3. c. 78. f. 37. "Every such surveyor shall, from time to time, give to, or cause to be left at the house or usual place of abode of every person or persons so liable to perform such duty or labour, as in this act directed, four days notice at the least of the day, hour, and place, upon which each of the said days duty shall be required to be performed.

The forfeitures inflicted for non-performance of the statute duty.

† *Stat.* 25. By 13. Geo. 3. c. 78. f. 37. "Every person or persons making default in finding and sending each wain, cart, or carriage, furnished as aforesaid, and such able men with the same, as herein required, or in performing the said duty at the time and place, and in the manner, by this act directed, shall, for every such default or neglect in sending such wain, cart, or carriage, with such men as aforesaid, forfeit the sum of ten shillings; and for every default in sending every cart with one horse and one man, three shillings; and for not sending every cart with two horses and one man, five shillings; and every person or persons making default in sending any such labourer, and every person making default in performing such labour, at the time and place, and in the manner directed by this act, or in paying such composition-money for the same as herein mentioned, shall, for every such neglect, forfeit the sum of one shilling and sixpence; all which forfeitures shall be applied for the use of the highways within the parish, township, or place, where the same shall arise.

The surveyor to be impartial.

† *Stat.* 26. By 13. Geo. 3. c. 78. f. 37. "The said surveyor shall fairly and equally demand and require such duty and labour from every person or persons liable to perform the same, according to the directions of this act, without favour or partiality to any person or persons whomsoever; and if in any parish, township, or place, it shall not be necessary to call forth the whole duty in any year, it shall be abated in a just and equal proportion amongst all persons liable to the same.

The surveyor shall recover the penalties before he makes up his accounts.

† *Stat.* 27. By 13. Geo. 3. c. 78. f. 37. "The said surveyor may, and shall, and he is hereby required, with all convenient speed, after default made in performance of such duty or labour as aforesaid, to proceed for the recovery of the penalties or forfeitures hereby inflicted for the same respectively, in manner herein-after directed, so that the same may be recovered before he makes up his accounts in the manner directed by this act."

Persons liable to perform the duty may be compounded for it with the surveyor or the justice of the peace.

† *Stat.* 28. But by 13. Geo. 3. c. 78. f. 38. it is enacted, "That any person or persons liable to perform the said

“ duty, by sending one or more team or teams, draught of
 “ draughts, plough or ploughs, with men, horses, or
 “ oxen, in manner aforesaid, shall and may compound
 “ for the same, if he, she, or they, shall think fit, by
 “ paying to the said surveyor, at the time, and in the man-
 “ ner herein-after mentioned, such sum or sums of money
 “ as the justices of the peace for the limit wherein such
 “ parish, township, or place shall be, or the major part of
 “ them, at their said special sessions, to be held in the
 “ first week after *Michaelmas* quarter sessions in every year,
 “ shall adjudge and declare to be reasonable, not exceeding
 “ six shillings, nor less than three shillings, for each team,
 “ draught, or plough, for each day; and in default of
 “ their adjudging and declaring the same, the sum of four
 “ shillings and six-pence for and in lieu of every such day’s
 “ duty for each team, draught, or plough; and for every
 “ cart and one horse or beast of draught, two shillings;
 “ and for every cart with two horses or beasts of draught,
 “ three shillings, for and in lieu of every day’s duty; and
 “ every inhabitant liable to perform such duty or labour
 “ as aforesaid, and not chargeable in any other respect as
 “ aforesaid, shall and may compound for the same, if he,
 “ she, or they, shall think fit, by paying to the surveyor
 “ the sum of four-pence, for and in lieu of every such day’s
 “ duty or labour respectively, at the time, and in the man-
 “ ner, herein-after directed for the payment of compo-
 “ sition-money.”

1 Stat. 29. By 13. Geo. 3. c. 78. s. 39. it is provided,
 “ That if it shall appear to the justices, at their special ses-
 “ sions, to be held in the week next after *Michaelmas* quar-
 “ ter sessions, that, from the directions herein-before given
 “ for the performing and compounding the statute-duty,
 “ there will be difficulty in procuring the necessary car-
 “ riages, or a sufficient number of labourers, for the repair
 “ of the highways, in any particular parish, township, or
 “ place, within their respective limits, without paying high
 “ and extravagant prices for the same; it shall and may be
 “ lawful for such justices to order and direct the team-duty
 “ hereby required, or so much thereof as they shall think
 “ fit, to be performed in kind, within every such parish,
 “ township or place, except in respect of such teams as
 “ belong to persons who do not occupy lands, tenements,
 “ woods, tithes, or hereditaments, of the annual value of
 “ thirty pounds within the same; and also to order the la-
 “ bourers, liable by this act to perform or compound for
 “ statute-duty, or such part of them as they shall think fit,
 “ to perform six days labour upon such highways in kind,
 “ in case so many days duty shall be required, upon being

But if labour-
 ers cannot be
 procured ex-
 cept at extra-
 vagant prices,
 the justices
 may order the
 persons liable
 to perform the
 duty at the or-
 dinary wages,
 and deduct
 the compo-
 sition-money.

“ paid for such labour the usual and customary wages given to labourers in such parish, township, or place, deducting thereout the sum of four-pence for each day’s duty so performed, being the composition hereby allowed for labourers: provided, that if part of such teams or labourers only are required, it shall be directed by the said order of the justices in some given proportion, as one half, third, or fourth part thereof.”

The persons liable to be called on, in such case, shall be chosen at a vestry by ballot.

† Sect. 30. By 13. Geo. 3. c. 78. s. 39. “ The surveyor shall, in that case, at a public vestry for such parish, township, or place, put the names of all the persons liable by this act to send such teams into one hat or box, and the names of all the persons liable to perform such labour into another hat or box, and some inhabitant then present shall draw out such number from each as shall be equal to the proportion so ordered by the said justices, and the persons so drawn shall perform such duty in kind for that year; and if any such order shall be made or continued in the subsequent year, the same method shall be observed, but the names drawn in the preceding year shall not be put into such hat or box; and in every succeeding year such method and regulation shall be observed by such surveyor, as to render the duty so required to be performed in kind as equal amongst the several persons liable thereto as may be.”

The order thereon shall supersede the liberty of compounding.

† Sect. 31. By 13. Geo. 3. c. 78. s. 39. “ Such order of the said justices, so far as the same shall be extended, shall supersede the said power or liberty of compounding, and shall be binding and effectual to all intents and purposes whatsoever, and shall continue in force until it shall be discharged or varied by the justices at some subsequent special sessions for the highways within such limit, to be held in the week next after Michaelmas quarter sessions.” *

Power of mitigation.

† Sect. 32. By 13. Geo. 3. c. 78. s. 40. it is also further enacted, “ That where any person shall keep a team, draught, or plough, and shall not occupy lands, tenements, woods, tithes, or hereditaments, to the value of thirty pounds *per annum*, in the parish, township, or place, where he shall reside, but shall in part maintain his horses and beasts of draught used in such team upon or from lands which he shall occupy in one or more adjacent parish or parishes, it shall and may be lawful for the said justices, at some special sessions, to mitigate and reduce the duty or composition so required to be performed or paid by
“ such

“such person or persons, in such manner, and to such sum, as they shall think just and reasonable.”

† *Sec. 33.* But by 13. Geo. 3. c. 78. s. 41. it is provided, Surveyors to give notice of the time and place for compounding.
 “That the said surveyor of every parish, township, or place, shall, on some *Sunday* in *November* in every year, cause ten days notice at the least to be given in the church or chapel of such parish, township, or place, and if there be no church or chapel, or no service performed therein, then at the most public place there, and repeat the like notice in such church, chapel, or place, on the next succeeding *Sunday*, of the time and place when and where the persons permitted under the authority of this act, and inclined to compound for the said duty, in manner aforesaid, may signify to such surveyor, their intention to compound; and all persons signifying the same, who shall then, or within the space of one calendar month afterwards, pay to such surveyor the composition authorised and allowed by this act, shall be discharged from the performance of such duty, which composition-money shall be employed by the surveyor for the use of the ways: and that no composition shall be permitted, unless the same shall be paid at the day, or within the time aforesaid.”

† *Sec. 34.* By 13. Geo. 3. c. 78. s. 41. “In cases where the occupation of any lands, tenements, woods, tithes, or hereditaments, shall be changed, or any new occupant or inhabitant shall come to reside in such parish, township, or place, after the time appointed for such composition, then the person or persons occupying such lands, tenements, woods, tithes, or hereditaments, or so residing in such parish, township, or place, shall be allowed to compound in manner aforesaid: provided he, she, or they, shall pay the said composition-money to the said surveyor within fourteen days after he, she, or they, shall enter upon such lands, tenements, or hereditaments, or shall come to reside in such parish, township, or place; and every tenant or occupier of any lands, tenements, woods, tithes, or hereditaments, who intends to quit the possession thereof, within six calendar months from the time fixed for making such composition, shall and may compound for half the duty hereby required, and the succeeding tenant or occupier shall and may, in that case, compound or perform the duty in kind for the other half thereof.” Persons who enter into the occupation of lands subsequent to the time of compounding, may afterwards compound.

† *Sec. 35.* By 13. Geo. 3. c. 78. s. 41. “If the surveyor shall receive from any person or persons a composition for The composition and the duty shall be equally apportioned.
 “more

" more duty than shall be required from the other inhabitants and occupiers within the same parish, township, or place, for the same year, he shall repay such extraordinary composition-money to such person or persons, so as to bring the duty to an equality amongst all such inhabitants and occupiers."

Duty where
no carriage is
kept.

+ *Stat.* 36. By 13. Geo. 3. c. 78. f. 42. " Where any person shall keep a draught or plough, and no carriage, he shall pay to the surveyor the sum of one shilling for every horte or pair of oxen or neat cattle, used in such draught or plough, for every day's statute-duty on the day such duty is required to be performed, or pay according to the rate aforesaid for the lands, tenements, woods, tithes, and hereditaments, which he shall occupy in such parish, township, or place, at the option of the surveyor."

Of the seed
month.

+ *Stat.* 37. By 13. Geo. 3. c. 78. f. 42. " The inhabitants of every parish, township, or place, at some vestry, or other public meeting, held pursuant to this act, may appoint three months in every year, within which no statute-duty shall be performed: one month in the spring, to be called the *seed month*; one month in the summer, for the hay harvest; and one other month in the summer, for the corn harvest."

+ *Stat.* 38. But by 13. Geo. 3. c. 78. f. 42. it is provided, " That notice in writing be given of the times so appointed to the surveyor of such parish, township, or place respectively, and also to the surveyor of every turnpike road lying within the same, within three days after every such meeting, and fourteen days at least before the beginning of each of such months."

Persons ex-
empted.

+ *Stat.* 39. By 26. Geo. 3. c. 107. f. 130. " No serjeant, corporal, or drummer of the militia, nor any private man, from the time of his enrollment until his discharge, shall be obliged to perform any highway duty commonly called statute work."

+ N. B. In the exposition of the former statutes upon this subject, viz. the 2. and 3. Philip and Mary, c. 8. f. 2.; the 22. Car. 2. c. 12. f. 8. and 9.; the 18. Eliz. c. 10. f. 2. and 3.; and the 7. and 8. Will. 3. c. 29.; the language of which is, with little variation, pursued by the above statute, 13 Geo. 3. c. 78. the following opinions have been held.

Sec. 40. FIRST, that (a) persons in holy orders are (a) 1. Keble 235. within the purview of them, in respect of their spiritual 476. possessions, as much as any other persons whatsoever, in 1. Ventris 273. respect of any other possessions, for the words are general, Watton 40. and there is no kind of intimation that any particular per- 2. Inst. 704. sons shall be exempted more than others.

Sec. 41. SECONDLY, (b) that he who keeps several (b) Raym. 186. draughts in a parish is bound to send a team for each draught, 3. Keble 567. whether he occupy any land in the parish or not; and in 588. 588. like manner, that he who occupies several plough-lands, Vide Dalt. c. 26. ought to send a team for each plough-land, whether he 2. Keble 617. keeps any draught or not.

Sec. 42. THIRDLY, that (c) notwithstanding the words (c) Palm. 389. of the statute extend only to the occupiers of lands, yet if 2. Roll. 412. the owner neither occupy them, nor let them, but suffer them to lie fresh, he shall be charged as much as if he had occupied them, for there is no reason that the publick shall suffer for his negligence.

Sec. 43. FOURTHLY, that it is no excuse for the inhabitants of a parish, being indicted at common law for not repairing the highways, that they have done the full work required of them by statute; for since these statutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes. Dalt. c. 26.

+ *Sec. 44.* FIFTHLY, that the appointment by the surveyor to do the six days statute-work, must express the particular days on which the work is required to be done, and not say between such a day and such a day only. Reg. v. Kime, 2. Ed. Ray. 858. 1. Salk. 357.

+ *Sec. 45.* SIXTHLY, that the inhabitants of a parish into which a road is turned by turnpike trustees, are not bound to do statute-work thereon. But by 13. Geo. 3. c. 84. f. 60. the surveyors of turnpike roads may, when necessary, enforce the powers given by the highway act. Wheeler v. Cooper, 1. B. Rep. 603.

N. B. DALTON is of opinion, that he who keeps a draught and but two horses, ought to attend therewith at the times appointed, and that if he carry with them such loads as they are able to draw, he shall be excused. Chapter 26.

+ *Sec. 46.* And whereas there may be *turnpike roads* in such a state and condition of repair, that the statute-duty How the funds of turnpike roads may be applied to the statute repair of the highways. M 4 required

required to be performed upon them may be dispensed with, &c. &c. it is therefore enacted by 13. Geo. 3. c. 84. f. 58. "That the justices at any special sessions, upon application to them made by the surveyor of any place in which such turnpike road lies, may summon the clerk and surveyor of such turnpike road to appear before them at some other special sessions, and then and there to produce before them a state of the revenues and debts belonging to such turnpike road, and such justices may then and there enquire into the state and condition of the repairs thereof, and also of such other highways; and if it shall appear to them, upon full and clear evidence, that the whole or any part of such statute-duty may be conveniently dispensed with from such turnpike roads, without endangering the securities for the money advanced upon the credit of the tolls thereof, and that such statute-duty is wanted for the repairs of the other highways within such parish, township, or place, the said justices may order the whole or part of such statute-duty to be performed upon the highways, not being turnpike, within such parish, township, or place, under the direction of the surveyor thereof, during such time as to them shall seem just and reasonable."

As to THE SECOND POINT, *viz.* Who may be assessed to a rate made for the defraying of the extraordinary charges of such repairs.

The justices at sessions, on application of the surveyor, may direct a rate for the purpose of purchasing materials, if none are to be procured within the parish.

† *Stat.* 47. It is recited by the abovementioned statute of 13. Geo. 3. c. 78. f. 30. "That in some parishes, townships, or places, there may not be sufficient materials for the repair of the highways within the same, nor within the waste lands, common grounds, rivers or brooks, of any other parish, township, or place, lying within a convenient distance from such highway, by reason whereof the surveyor of such highway may be forced to buy such materials, and to make recompence and satisfaction to the owner or occupier of inclosed lands, for damage which may be done by getting and carrying thereof: and whereas no provision is made for raising a fund to reimburse the expences thereof, and also such expences as the said surveyors may incur, by erecting guide-posts, or other posts or stones, and by making or repairing such trunks, tunnels, plats, bridges, or arches, as aforesaid, and by rendering satisfaction for damages done to lands by the making of new ditches or drains, nor for the salary to be paid by such parish, township, or place, to such surveyor as aforesaid;" it is therefore enacted, "That upon application by such surveyor to the justices of the peace, at their special sessions,

“ fions, and oath made of the sum or sums of money
 “ which he hath *bona fide* laid out and expended, or which
 “ will be required for the purposes aforesaid, the said jus-
 “ tices, or any two or more of them, shall, and they are
 “ hereby impowered, by warrant under their hands and
 “ seals, to cause an equal assessment to be made, for the pur-
 “ poses aforesaid, upon all occupiers of lands (2), tenements,
 “ woods, tithes, and hereditaments, within such parish,
 “ township, or place, where such money shall be so ex-
 “ pended or laid out; and the same shall be made and
 “ collected by such person or persons, and allowed in
 “ such manner, as the said justices, by their order at such
 “ sessions, shall direct and appoint in that behalf; and the
 “ money thereby raised shall be employed and accounted
 “ for according to the direction of the said justices, for
 “ the purposes aforesaid; and the said assessment shall be
 “ levied in such manner as herein-after mentioned.”

(2) An order for imposing a rate was quashed, because it did not appear but that the statute duty was sufficient, and because only the occupiers of land were charged, whereas others are equally liable.

Str. 315. See vide Fortesc.

327.

† *Sec. 48.* But by 13. Geo. 3. c. 78. f. 30. it is provided,
 “ That no such assessment to be made for those or any of
 “ those purposes, in any one year, shall exceed the rate of
 “ sixpence in the pound, of the yearly value of the lands,
 “ tenements, woods, tithes, and hereditaments, so to be
 “ assessed.”

† *Sec. 49.* By 13. Geo. 3. c. 78. f. 45. it is further enacted, “ That if upon application of the surveyor of the
 “ highways for any parish, township, or place, to the jus-
 “ tices of the peace for the limit wherein such parish,
 “ township, or place lieth, at their general or quarter ses-
 “ sions of the peace, or at some special sessions for the
 “ highways, the said justices shall be fully satisfied, by
 “ proof upon oath, that the duty directed to be performed,
 “ and the money authorised to be collected and received,
 “ has been performed, applied, and expended, according
 “ to the directions of this act, or shall be fully satisfied
 “ that the common highways, bridges, causeways, streets,
 “ or pavements, belonging to such parish, township, or
 “ place, are so far out of order, that they cannot be suf-
 “ ficiently amended and repaired, paved, cleaned, and
 “ supported, by the means herein-before prescribed (no-
 “ tice being first given of such intended application at the
 “ church or chapel of such parish, township, or place, on
 “ some *Sunday* preceding such quarter or special sessions;
 “ or if the place be extraparochial, notice in writing being
 “ first given of such intended application to some of the
 “ principal inhabitants residing in such extraparochial place,
 “ a week at least before such general or special sessions);
 “ and then, and in any of the said cases, an equal assess-
 “ ment,

In what manner an assessment may be made.

Vide the case of the King v. Inh. of Newton in Cheshire.

"ment upon all and every the occupier of lands, tenements, woods, tithes, and hereditaments, within any such parish, township, or place, shall or may be made and collected by such person or persons, and allowed in such manner, as the said justices, by their order, at such general or special sessions, shall direct and appoint in that behalf; and the money thereby raised shall be employed and accounted for, according to the orders and directions of the said justices, for and towards the amending, repairing, paving, cleansing, and supporting such highways, causeways, streets, pavements, and bridges, from time to time, as need shall require."

Not to exceed
ed. in the
pound.

Wide post.

+ Sec. 50. And by 13. Geo. 3. c. 78. s. 46. "The assessment herein last before authorized, and the assessment herein before authorized, for buying materials, making satisfaction for damages, erecting guide-posts, and paying the surveyor's salary, shall not together, in any one year, exceed the rate of nine-pence in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments, so to be assessed."

As to THE THIRD POINT, *viz.* In what manner fines for non-repair shall be levied and assessed.

Fines, &c. how
levied and ap-
plied.

+ Sec. 51. It is enacted by the said statute of 13. Geo. 3. c. 78. s. 47. "That no fine, issue, penalty, or forfeiture, for not repairing the highways, or not appearing to any indictment or presentment for not repairing the same, shall hereafter be returned into THE COURT OF EXCHEQUER, or other court, but shall be levied by and paid into the hands of such person or persons residing in or near the parish, township, or place, where the road shall lie, as the court imposing such fines, issues, penalties, or forfeitures, shall order and direct, to be applied towards the repair and amendment of such highways; and the person or persons so ordered to receive such fine shall, and is hereby required to receive, apply, and account for the same, according to the direction of such court, or, in default thereof, shall forfeit double the sum received."

The justices,
on application
of any individ-
ual on whom
a fine imposed
on a parish has
been levied,
may make a
rate to reim-
burse him.

+ Sec. 52. By 13. Geo. 3. c. 78. s. 47. "If any fine, issue, penalty, or forfeiture, to be imposed on any such parish, township, or place, for not repairing the highways, or not appearing as aforesaid, shall hereafter be levied on any one or more of the inhabitants of such parish, township, or place, that then such inhabitant or inhabitants shall and may make his or their complaint to the justices
" of

“ of the peace, at their special sessions ; and the said justices are hereby impowered and authorised, by warrant under their hands and seals, to cause a rate to be made, according to the form and manner herein-last before prescribed, for the reimbursing such inhabitant or inhabitants the monies so levied on him or them as aforesaid ; which rate so made, and confirmed by any two justices, shall be collected and levied by the surveyor of the highways of such parish, township, or place, so presented or indicted, as aforesaid ; and the said surveyor shall, within one month next after the making and confirming the rate aforesaid, collect, levy, and pay unto such inhabitant or inhabitants the money so levied on him or them as aforesaid.”

† *Seet.* 53. It hath been decided, that if a parish consisting of two districts, which are bound to repair separately, be convicted for not repairing the road in one of the districts, the other district having no notice of the indictment, the Court will consider it as being substantially the conviction of the one district, and if the fine be levied on an inhabitant of the other, will grant a *mandamus* for a rate to be levied on the district bound to repair the indicted part of the road. But the *mandamus* must be special, suggesting that the part of the highway which was the subject of the indictment, lay wholly in the township indicted, and that the two townships were separately bound to repair their respective parts of the highway, in order to afford the indicted township an opportunity of traversing the facts.

*Rex v. Town-
send, Dougl.*
422.

*See Rex v.
Clifton,
5 Term Rep.*
493.

AS TO THE FOURTH POINT, *viz.* In what manner the profits of lands settled in trust for the repairs of the highways shall be employed.

† *Seet.* 54. It is enacted by the abovementioned statute of 13. Geo. 3. c. 78 s. 52. “ That where any lands have been, or shall be given for the maintenance of causeways, pavements, highways, and bridges, all such persons who are, or shall be enfeoffed or trusted with any such lands, shall let them to farm at the most improved yearly value, without fine, and that the justices of the peace, in their open sessions, shall and may inquire, by such ways and means as they shall think fitting, into the value of all such lands so given, or to be given, and order the improvement and employment of the rents and profits thereof according to the will and direction of the donor of such lands, if they find that the persons so intrusted have been negligent or faulty in the performance

Persons enfeoffed with lands.

“ of

" of their trust, except such lands have been given for the
 " uses aforesaid to any college or hall in either of the
 " universities of this kingdom, which have visitors of their
 " own."

As to THE THIRD GENERAL HEAD of this chapter, viz.
 In what manner the highway is to be enlarged.

(3) If a high-
 way be not
 much wanted
 for the use of
 the publick,
 the Court will
 not grant an
 information for
 suffering it to
 be out of re-
 pair. Sayer 93.

Widening
 roads.

+ *Stat.* 55. It is enacted by the 13. Geo. 3. c. 78. s. 15.
 " That the said surveyors of the highways shall make, sup-
 " port, and maintain, or cause to be made, supported, and
 " maintained, every public (3) cartway leading to any
 " market town, twenty feet wide at the least; and every
 " public horseway or driftway, eight feet wide at the least,
 " if the ground between the fences inclosing the same will
 " admit thereof."

+ *Stat.* 56. But by 13. Geo. 3. c. 78. s. 16. " Where it
 " shall appear, upon the view of any two justices, that the
 " ground or soil of any highway between the fences
 " thereof is not of sufficient breadth, and may be con-
 " veniently widened and enlarged, or that the same cannot be
 " conveniently enlarged and made commodious for travellers,
 " without diverting and turning the same; such justices
 " shall, and they are hereby impowered, within their re-
 " spective jurisdictions, to order such highways respectively
 " to be widened and enlarged, or diverted and turned, in
 " such manner as they shall think fit, so that the said high-
 " ways, when enlarged and diverted, shall not exceed thirty
 " feet in breadth; and that neither of the said powers do ex-
 " tend to pull down any house or building, or to take away
 " the ground of any garden, park, paddock, court, or yard."

Cowper 648.
 Vide also 2.
 Burr. 799.

+ *Stat.* 57. It hath been decided, that this power given to
 two justices to order any highway to be widened, extends to
 roads repairable *ratione temporis*; and upon disobedience to such
 order, the party may either be proceeded against summarily
 under the statute, or by indictment as an offence at com-
 mon law.

Surveyors to
 recompence
 owners of
 lands.

+ *Stat.* 58. By 13. Geo. 3. c. 78. s. 16. " For the satis-
 " faction of the person or persons, bodies politiek or corpo-
 " rate, who are seised or possessed of, or interested in their
 " own right, or in trust for any other person or persons, in
 " the said ground that shall be laid into the said highways
 " respectively, so to be enlarged, or through which such
 " highway so to be diverted and turned shall go, the said
 " surveyor, under the direction and with the approbation
 " of the said justices, shall, and is hereby empowered to
 " make

“ make an agreement with him, her, or them, for the re-
 “ compence to be made for such ground, and for the mak-
 “ ing such new ditches and fences as shall be necessary, ac-
 “ cording and in proportion to their several and respective
 “ interests therein, and also with any other person or per-
 “ sons, bodies politick or corporate, that may be injured
 “ by the enlarging, altering, or diverting such highways
 “ respectively, for the satisfaction to be made to him, her,
 “ or them respectively, as aforesaid.

† *Stat. 59.* By 13. Geo. 3. c. 78. s. 16. “ If the said sur- The recom-
 veyor, under the direction, and with the approbation of pence may be
 “ the said justices, cannot agree with the said person or per- estimated by a
 sons, bodies politick or corporate, or if he, she, or they, jury; &c.
 “ cannot be found, or shall refuse to treat, or take such re-
 “ compence or satisfaction as shall be offered to them re-
 “ spectively by such surveyor; then the justices of the
 “ peace, at any general quarter sessions to be holden for the
 “ limit wherein such ground shall lie, upon certificate in
 “ writing, signed by the justices making such view as afore-
 “ said, of their proceedings in the premises, and upon proof
 “ of fourteen days notice in writing having been given by
 “ the surveyor of such parish, township, or place, to the
 “ owner, occupier, or other person or persons, bodies po-
 “ litick or corporate, interested in such ground, or to his,
 “ her, or their guardian, trustee, clerk, or agent, signify-
 “ ing an intention to apply to such quarter sessions for the
 “ purpose of taking such ground, shall impanel a jury of
 “ twelve disinterested men out of the persons returned to
 “ serve as jurymen at such quarter sessions; and the said
 “ jury shall, upon their oaths, to the best of their judg-
 “ ment, assess the damages to be given, and recompence
 “ to be made, to the owners and others interested as afore-
 “ said in the said ground, for their respective interests, as
 “ they shall think reasonable, not exceeding forty years pur-
 “ chase for the clear yearly value of the ground so laid out,
 “ and likewise such recompence as they shall think reason-
 “ able, for the making of new ditches and fences on the
 “ side or sides of the said highways that shall be so enlarged
 “ or diverted, and also satisfaction to any person or per-
 “ sons, bodies politick or corporate, that may be otherwise
 “ injured by the enlarging or diverting the said highways
 “ respectively.”

† *Stat. 60.* And by 13. Geo. 3. c. 78. s. 18. “ Upon pay- On payment
 ment or tender of the money so to be awarded and assessed of money as-
 “ to the person or persons, bodies politick or corporate, in- essed, the
 “ titled to receive the same, or leaving it in the hands of ground to be
 deemed a pub-
 lic highway.
 “ the clerk of the peace of such limit, in case such person
 “ or

“ or persons, bodies politick or corporate, cannot be found
 “ or shall refuse to accept the same, for the use of the
 “ owner of, or others interested in, the said ground, the
 “ interest of the said person or persons, bodies politick or
 “ corporate, in the said ground, shall be for ever divested
 “ out of them, and the said ground, after such agreement
 “ or verdict as aforesaid, shall be esteemed and taken to be
 “ a public highway to all intents and purposes what-
 “ soever; saving nevertheless to the owner or owners of
 “ such ground all mines, minerals, and fossils, lying under
 “ the same, which can or may be got without breaking the
 “ surface of the said highway; and also all timber and
 “ wood growing upon such ground, to be fallen and taken
 “ by such owner or owners within one month after such
 “ order shall have been made, or in default thereof, to be
 “ fallen by the said surveyor or surveyors, within the re-
 “ spective months aforesaid, and laid upon the land ad-
 “ joining, for the benefit of the said owner or owners.”

Where there
 is not money
 sufficient, as-
 sessments may
 be raised by
 order of the
 justices of the
 quarter ses-
 sions.

† *Stat. 61.* And by 13. Geo. 3. c. 78. s. 16. “ Where
 “ there shall not appear sufficient money in the hands of
 “ the surveyor or surveyors for the purposes aforesaid,
 “ then the said two justices, in case of agreement, or the
 “ said court of quarter sessions, after such verdict as aforesaid,
 “ shall order an equal assessment to be made, levied,
 “ and collected, upon all and every the occupiers of lands,
 “ tenements, woods, tithes, and hereditaments, in the
 “ respective parishes, townships, or places, where such
 “ highways shall lie, and direct the money to be paid to
 “ the person or persons, bodies politick or corporate, so
 “ interested, in such manner as the said justices, or court
 “ of quarter sessions respectively, shall direct and appoint:
 “ and the money thereby raised shall be employed and ac-
 “ counted for, according to the order and direction of
 “ the said justices, or court of quarter sessions respectively,
 “ for and towards the purchasing the land to enlarge or
 “ divert the said highways, and for the making the said
 “ ditches and fences, and also satisfaction for the damages
 “ sustained thereby.”

Not exceeding
 6d. in the
 pound.

† *Stat. 62.* By 13. Geo. 3. c. 78. s. 16. “ The said as-
 “ sessment, if not paid within ten days after demand, shall, by
 “ order of the said justices, or court of quarter sessions re-
 “ spectively, be levied by the said surveyor, in the manner
 “ herein-after mentioned: provided that no such assessment
 “ to be made in any one year, shall exceed the rate of six-
 “ pence in the pound of the yearly value of the lands, tene-
 “ ments, woods, tithes, and hereditaments, so assessed.”

† *Stat.* 63. And by 13. Geo. 3. c. 78. f. 17. it is further enacted, “ That when any such new highways shall be made as aforesaid, the old highway shall be stopped up, and the land and soil thereof shall be sold by the said surveyor, with the approbation of the said justices, to some person or persons whose lands adjoin thereto, if he, she, or they, shall be willing to purchase the same; if not to some other person or persons, for the full value thereof.

Old highway and soil may be sold by the surveyors;

† *Stat.* 64. But by 13. Geo. 3. c. 78. f. 17. “ If such old road shall lead to any lands, house, or place, which cannot, in the opinion of such justices respectively, be accommodated with a convenient way and passage from such new highway, which they are hereby authorised to order and lay out, if they find it necessary; then, and in such case, the said old highway shall only be sold subject to the right of way and passage to such lands, house, or place respectively, according to the ancient usage in that respect; and the money arising from such sale, in either of the said cases, shall be applied towards the purchase of the land where such new highway shall be made.

subject to the ancient right of way to private houses.

† *Stat.* 65. And by 13. Geo. 3. c. 78. f. 17. “ Upon payment or tender of the money so to be agreed for as aforesaid, and upon a certificate being signed by the said two justices, or by the chairman of the said court of quarter sessions, in case the same shall be determined there, describing the lands so sold, and expressing the sum so agreed for, and directing to whom the same shall be paid, and upon the purchaser's taking a receipt for such purchase-money from the person intitled to receive the same, by an indorsement on the back of such certificate, the soil of such old highway shall become vested in such purchaser and his heirs; but all mines, minerals, and fossils, lying under the same, shall continue to be the property of the person or persons who would, from time to time, have been intitled to the same, if such old highway had continued there.

The old highway shall be vested in the purchaser on payment of the money, but the mines and minerals reserved to the owners.

† *Stat.* 66. And by 13. Geo. 3. c. 78. f. 18. it is also enacted, “ That in case such jury shall give in and deliver a verdict for more monies, as a recompence for the right, interest, or property, of any person or persons, bodies politic or corporate, in such lands or grounds, or for the making such fence, or for such damage or injury to be sustained by him, her, or them respectively, as aforesaid, than what shall have been proposed and offered by the said surveyor, before such application to the said court of quarter sessions as aforesaid; that then, and in such

Costs of proceedings by whom payable.

“such case, the costs and expences attending the said
 “several proceedings shall be borne and paid by the sur-
 “veyor of the said highway, out of the monies in his or
 “their hands, or to be assessed and levied by virtue and
 “under the powers of this act; but if such jury shall give
 “and deliver a verdict for no more, or for less monies than
 “shall have been so offered and proposed by the said sur-
 “veyor before such application to the said court of quarter
 “sessions; that then the said costs and expences shall be
 “borne and paid by the person or persons; bodies politick
 “or corporate, who shall have refused to accept the recom-
 “pence and satisfaction so offered to him, her; or them;
 “as aforesaid.”

(4) The fact
 of non-repair
 is traversable
 when a justice
 presents a
 highway on
 his own view.
*Rex v. Justices
 of Wilts.* 1.
Black. 467.

† *Sec.* 67. By 13. Geo. 3. c. 78. s. 19. it is also further
 enacted, “That when it shall appear, upon the view (4)
 “of any two or more of the said justices of the peace, that
 “any public highway, not in the situation herein-before
 “described, or public bridleway or footway, may be di-
 “verted, so as to make the same nearer or more commo-
 “dious to the publick, and the owner or owners of the lands
 “and grounds through which such new highway, bridle-
 “way, or footway, is proposed to be made, shall con-
 “sent thereto, by writing under his or their hand and
 “seal, or hands and seals, it shall and may be lawful, by
 “order of such justices, at some special sessions, to divert
 “and turn, and to stop up such footway, and to divert,
 “turn, and stop up, and inclose, sell, and dispose of their
 “old highway or bridleway, and to purchase the ground
 “and soil for such new highway, bridleway, or footway,
 “by such ways and means, and subject to such excep-
 “tions and conditions, in all respects, as herein-before
 “mentioned with regard to highways to be widened or
 “diverted.”

Persons in-
 jured by pro-
 ceeding on an
ad quod dam-
nium may ap-
 peal.

† *Sec.* 68. By 13. Geo. 3. c. 78. s. 19. “Where any such
 “highway, bridleway, or footway, herein-last before de-
 “scribed, shall be so ordered to be stopped up or inclosed, and
 “such new highway, bridleway, or footway, set out and ap-
 “propriated in lieu thereof, as aforesaid, it shall and may be
 “lawful for any person or persons injured or aggrieved by
 “any such order or proceeding, or by the inclosure of any
 “road or highway, by virtue of any inquisition taken upon
 “any writ of *ad quod damnum*, to make his or their complaint
 “thereof, by appeal to the justices of the peace, at the next
 “general quarter sessions, which shall be holden within the
 “limit where the same shall lie, after such order made, or
 “proceeding had, as aforesaid, upon giving ten days notice,
 “in writing, of such appeal to the surveyor and party inte-
 “rested

“ rested in such inclosure, if there shall be sufficient time
 “ for that purpose; if not, such appeal may be made upon
 “ the like notice to the next subsequent quarter sessions of
 “ the peace; which courts of quarter sessions are hereby
 “ respectively authorized and empowered to hear and finally
 “ determine such appeal.

† *Sec.* 69. And by 13. Geo. 3. c. 78. s. 19. “ If no such
 appeal be made, or, being made, such order and proceedings
 “ shall be confirmed by the said court, the said inclosures
 “ may be made, and the said ways stopped, and the proceed-
 “ ings thereupon shall be binding and conclusive to all per-
 “ sons whomsoever; and the new highway, bridleway, or
 “ footway, so to be appropriated and set out, shall be, and
 “ for ever after continue, a public highway, bridleway,
 “ or footway, to all intents and purposes whatsoever.”

Upon this clause the following determinations have been made.

† *Sec.* 70. FIRST, That though the appeal is directed *Ex parte Ven-*
 to the next quarter sessions, yet the justices may adjourn the *der, 3. Atk.*
 quarter sessions itself to another day, or they may adjourn *771.*
 the particular matter to a subsequent sessions.

† *Sec.* 71. SECONDLY, That this appeal is a waiver to *Ex parte Ven-*
 any objection of surprize, with respect to the mal-execution *der, 3. Atk.*
 of the writ of *ad quod damnum*; for the statute has put the *767. 771.*
 justices in the room of the traverse, and if the party instead
 of appealing had traversed the inquisition, and issue had been
 taken on it and a verdict found, he could not have applied
 to the court of chancery upon a suggestion of surprize, and
 a fraudulent and clandestine execution of the writ.

† *Sec.* 72. THIRDLY, That even upon such an enquiry, *3. Atk. 770.*
 the Court will not regard any complaint upon the ground of
 public inconvenience, for that would be setting up a juris-
 diction in opposition to a jurisdiction appropriated by the act
 of parliament to the quarter sessions only: but if a jury have
 manifestly done contrary to the general good of the country,
 it may afford a strong corroborating evidence of surprize.

† *Sec.* 73. FOURTHLY, That it is not necessary for the *3. Atk. 770.*
 sheriff to give formal notice of the execution of the writ: it
 is sufficient if the jury be summoned impartially, and the
 inquisition is made in a fair and open manner.

† *Sec.* 74. FIFTHLY, That where a new road is made in *3. Atk. 766.*
 pursuance of such writ, and inquisition thereupon found,

after the person who sued out the writ has once made the road, the parishioners ought to keep it in repair for the future, because being discharged from repairing the old road no new burthen is laid upon them, but their labour is only transferred from one place to another.

Venner v.
Lucy, 3 Atk.
766.

+ *Sec. 75.* SIXTHLY, That if the new road lie in another parish, then the person who sued out the writ and his heirs ought not only to make it, but to keep it in repair; otherwise the parishioners of such other parish would have a new charge upon them, and no recompence by the former road being taken away.

No old highway shall be inclosed until the new highway is completed.

+ *Sec. 76.* But by 13. Geo. 3. c. 78. f. 19. "No inclosures of such old highways or bridleway, or stoppage of such footway, shall be made, until such new highways, bridleway, or footway, shall be completed, and put into good condition and repair, and so certified by two justices of the peace, upon view thereof, which certificate shall be returned to the clerk of the peace, and inrolled amongst the records of sessions; but from and after such certificate, such old highways, bridleway, or footway, shall and may be stopped up, and the soil of such old highways or bridleway sold, in the manner, and subject to the reservations and restrictions herein-before mentioned with respect to highways to be enlarged or diverted by virtue of this act."

No prosecution shall be had after an old highway has been turned, or a new highway made for twelve months.

Vide Douglas

749.

B. R. H.

1. Shower 28.

Levinz 1234.

W. Jones 296.

L. Raym. 725.

Godbolt 4, 52.

3. Comm. p. 36.

+ *Sec. 77.* And by 13. Geo. 3. c. 78. f. 19. "Where any highway, bridleway, or footway, hath been diverted and turned above twelve months, either from necessity, where the same have been destroyed by floods, or slips of the ground on which they were made, or from other causes and motives, if new highways, bridleways, or footways, have been made in lieu thereof, nearer or more commodious to the publick, and the same have been acquiesced in, and no suit or prosecution hath been commenced for the diverting or turning the same, every new highway, bridleway, or footway, set out and used in the place of that so diverted and turned, shall from henceforth be the public highway, bridleway, or footway, to all intents and purposes whatsoever."

New highways shall be repaired by those who were liable to repair the old highways.

+ *Sec. 78.* And by 13. Geo. 3. c. 78. f. 19. "All persons liable to the repair of any such old highways, bridleway, or footway, so diverted and turned, or to be diverted and turned, as aforesaid, shall, in the same manner, be and continue liable to the repair of such new highways, bridleway, or footway, except where any agreement shall have been

“ been made relative to such repairs between the parties interested therein, which hath laid the burthen thereof, or any part thereof, upon any other person or persons, in which case the same shall be observed.”

† *Secl.* 79. But by 13. Geo. 3. c. 78. f. 20. it is provided, “ That no common land, lying between the fences of any old highway to be flopped up or inclosed by virtue of this act, shall be inclosed; and where the land lying between the fences of such highway, not being common land, shall, upon a medium, exceed thirty feet in breadth, and not extend to fifty feet in breadth, the same shall not be flopped up or inclosed, until satisfaction shall be made to the owner of such land, for so much thereof as shall exceed the said breadth of thirty feet; and if the parties cannot agree in the satisfaction so to be made, the same shall be adjusted by the said justices, or the jury, if a jury shall be impanelled.”

How the old highways, or the lands lying between the fences inclosing the same, shall be disposed of.

† *Secl.* 80. And by 13. Geo. 3. c. 78. f. 20. “ If the land between the fences inclosing such highways, not being common land, shall exceed fifty feet in breadth upon a medium, or if the said old road, so to be diverted or turned, shall lie through the open field or ground belonging to any particular person or persons, such person or persons, and also the person or persons intitled to the land between the fences on the side of such highway, shall respectively hold and enjoy the land and soil of such old highway, and pay to the surveyor, for the use of the highways, so much money as shall be agreed upon between the parties; or if they cannot agree, so much as shall be deemed and adjudged by the said justices, or jury, if such jury shall be impanelled as aforesaid, to be adequate to the purchase of it, estimating such highway at thirty feet in breadth, upon an average.”

† *Secl.* 81. And by 13. Geo. 3. c. 78. f. 21. it is further enacted, “ That where any footway shall be diverted by virtue of this act through the land belonging to the same person who owned the land through which such old footway lay, the same shall be adjudged and deemed an *exchange* only, and no satisfaction or compensation shall be made, unless the land to be used for such new footway shall be of greater length, and of greater value than the land used for such old footway.”

Where old footways are flopped up, and new ones laid out, in what manner the owners of the lands shall make and receive satisfaction.

† *Secl.* 82. And by 13. Geo. 3. c. 78. f. 21. “ Where the said footway shall not be turned through the lands belonging to the same person, the damage occasioned by such old footway

N 2

“ footway to the lands through which it lay, if the parties interested shall not agree in adjusting the same, shall be adjudged by two indifferent persons, the one to be named by the owner of the land, and the other by the said two justices; and if the person so to be nominated cannot agree therein, they shall chuse some third person to adjudge the same, whose determination shall be final; and the money at which such damages shall be assessed shall be applied in making satisfaction to the owner or owners of the land through which such new footway shall be made.”

Justices to order unnecessary highways to be stopped

6. Mod. 45.
Ld. Raym.
1175.
Co. Lit. 56. a.

+ *Sec. 83.* And by 13. Geo. 3. c. 78. s. 22. it is further enacted, “ That if in any parish, township, or place, where any highway shall be diverted and turned by virtue of this act, it shall appear to the justices, who are hereby authorized to view or inquire into the same, that there are other highways within such parish, township, or place, besides that so to be diverted and turned, which may, without inconvenience to the public, be diverted into such new highway hereby authorized to be made, or into any other highway or highways within such parish, township, or place, and the charge of repairing such highway or highways may be thereby saved to such parish, township, or place, it shall and may be lawful for such justices to order such highway or highways, which shall appear them unnecessary, to be stopped up, and the soil thereof sold, in such manner, and subject to such restrictions, and such right of appeal to the party or parties aggrieved thereby, as are hereinbefore respectively directed and given concerning the highways to be stopped up or inclosed.”

Page 2. Harwood, Cald. 222.

+ *Sec. 84.* It hath been determined, that the above clauses make but one provision, that the powers given under them were intended to make but one transaction; that it must be one entire act of the magistrates, and therefore that two roads cannot be respectively stopped up under the 19. & 22. Sections; for this power to shut up roads is only given where there is a new road to be set out.

As to THE FOURTH GENERAL HEAD of this Chapter, viz. In what manner the surveyors of the highways shall be appointed.

On the 22d Sept. yearly a list of ten persons to be made, &c.

+ *Sec. 85.* It is enacted by the 13. Geo. 3. c. 78. s. 1. “ That upon the twenty-second day of September, in every year, unless that day shall be Sunday, and then on the day following, the constables, headboroughs, tythingmen, churchwardens, surveyor of the highways, and householders, being assessed to any parochial or public rate of
“ every

“ every parish, township, or place, shall assemble together
 “ at the church or chapel, or if there shall be no church or
 “ chapel, then at the usual place of public meetings for such
 “ parish, township, or place, at the hour of eleven in the
 “ forenoon; and the major part of them, so assembled, shall
 “ make a list of the names of at least ten persons living
 “ within such respective parishes, townships, or places,
 “ who each of them have an estate in lands, tenements, or
 “ hereditaments, lying within such respective parish, town-
 “ ship or place, in their own right, or in the right of their
 “ wives, of the value of ten pounds by the year; or a per-
 “ sonal estate of the value of one hundred pounds; or are
 “ occupiers or tenants of houses, lands, tenements, or he-
 “ reditaments, of the yearly value of thirty pounds. and if
 “ there shall not be ten persons having such qualifications
 “ as aforesaid, then they shall insert in such list the names
 “ of so many of such persons as are so qualified, as above
 “ required, together with the names of so many of the most
 “ sufficient and able inhabitants of such parish, township,
 “ or place, not so qualified, as shall make up the number
 “ ten, if so many can be found; if not, so many as shall
 “ be there resident, to serve the office of surveyor of the
 “ highways.

† *Sec. 86.* And by 13. Geo. 3. c. 7. s. 1. “ The constable,
 “ headborough, or tythingman, of such parish, township, or
 “ place, shall, within three days after such meeting, transmit
 “ a duplicate of such list to one of the justices of the peace
 “ within the limit of the county, riding, division, hundred,
 “ city, corporation, precinct, or liberty, where such parish,
 “ township, or place, shall lie, living in or near the same;
 “ and shall also return and deliver the original list, made
 “ and agreed upon at such meeting, to the justices of the
 “ peace, at their special sessions to be held for the highways
 “ within that limit, in the week next after the *Michaelmas*
 “ general quarter sessions of the peace in every year; and
 “ shall also, within three days after making the said list, give
 “ personal notices to, or cause notices in writing to be left
 “ at the places of abode of, the several persons contained in
 “ such list, informing them of their being so named, to the
 “ intent that they may severally appear before the justices
 “ at the said special sessions, to accept such offices, if they
 “ shall be appointed thereto, or to shew cause, if they have
 “ any, against their being appointed.”

A duplicate of
 such list shall
 be transmitted
 to one of the
 justices, and
 the original
 list to the spe-
 cial sessions,
 &c.

Notices to the
 persons con-
 tained in the
 list.

† *Sec. 87.* And by 13. Geo. 3. c. 78. s. 1. “ The said
 “ justices are hereby authorized and required to hold such spe-
 “ cial sessions at such convenient place or places, within their
 “ respective limits, as they, in their discretion, shall judge

The justices
 are to give ten
 days notice of
 holding spe-
 cial sessions to

the constables, &c. and may appoint qualified surveyors from the list, or other persons, to be appointed, and to give notice of the time and place where they intend to hold the same, to the constables, headboroughs, or tythingmen, of every such parish, township, or place, at least ten days before the holding of the said sessions; and the said justices, then and there, from the said lists, according to their discretion, and the largeness of the parish, township, or place respectively, by warrant under their hands and seals, shall appoint one, two, or more, of such persons as aforesaid, if he or they shall, in the opinion of such justices, be qualified for the office of surveyor; if not, one, two or more of the other substantial inhabitants or occupiers of lands, tenements, woods, tithes, or hereditaments, within such parish, township, or place, living within three miles thereof, and within the same county, fit and proper to serve the office of surveyor of the highways for such parish, township, or place, if any such can be found."

Which appointment shall be notified by the constables.

And the surveyor hold his office for a year.

† *Seet.* 88. By 13. Geo. 3. c. 78. f. 1. "Such appointment shall, by the constables, headboroughs, or tythingmen aforesaid, be notified to every person so appointed by the said justices, within three days after such appointment, by serving him with the said warrant, or by leaving the same, or a true copy thereof, at his house, or usual place of abode; and every person so appointed, if he accepts the said office, shall be surveyor of the highways for the said parish, township, or place for the year ensuing, and shall take upon him, and duly execute the office aforesaid; and the said justices shall then and there give such of the said surveyors as shall personally appear before them a charge, for the better performance of their duty according to the directions of this act."

Penalty on refusing to serve.

† *Seet.* 89. And by 13. Geo. 3. c. 78. f. 1. "If any of the said persons so appointed, whose names are contained in such list, and who were served with the said notice, shall refuse or neglect to appear at the said special sessions, and accept the said office, if appointed thereto, in manner aforesaid, or shall not, within six days after being served with such warrant of appointment, signify his acceptance thereof, either in person or by writing, to one of the said justices, he shall forfeit five pounds."

† *Seet.* 90. And by 13. Geo. 3. c. 78. f. 1. "In case any person so appointed by the said justices, whose name was not contained in such list, shall refuse or neglect to accept the said office, or shall not, within six days after being served with such appointment, shew to one of the justices signing such appointment sufficient cause why he should not serve such office, he shall forfeit fifty shillings."

† *Seet.*

† *Sec. 91.* But by 13. Geo. 3. c. 78. f. 1. it is provided, Noperson who hath served one year, to serve again within three years for same place without his consent.
 “ That no person who hath been appointed and served the
 “ office of surveyor for one year, shall be liable to be ap-
 “ pointed surveyor for the same parish, township, or place,
 “ within three years from the time of such first appoint-
 “ ment and service, unless he shall consent thereto.”

† *Sec. 92.* But by 13. Geo. 3. c. 78. f. 1. “ If no such list If no such list be made, or the person appointed refuse to serve, another person may be appointed at a subsequent special sessions, and a salary fixed.
 “ shall be made and returned, or if the said justices shall make
 “ such appointment as aforesaid, and the person or persons so
 “ appointed shall refuse to serve the said office, the said jus-
 “ tices, or any two of them, shall and may, and are hereby
 “ required, at the said special sessions, or at some subsequent
 “ special sessions, to be held within one month after, to
 “ nominate and appoint some other person or persons to be
 “ surveyor of such parish, township, or place, whom they
 “ shall judge proper to execute that office, and shall and may
 “ fix such salary to be paid to such surveyor, to be appoint-
 “ ed as herein last before mentioned, out of the said forfei-
 “ tures, and all other forfeitures, fines, penalties, assess-
 “ ments, and compositions, to be paid, levied, and raised,
 “ under the authority of this act, within such parish, town-
 “ ship, or place respectively, as such justices shall think fit,
 “ not exceeding one eighth part of what shall have been
 “ raised by an assessment of sixpence in the pound, for the
 “ use of the highways within such parish, township, or
 “ place, where any such assessment shall have been raised,
 “ and observing the same restriction, as near as they can,
 “ from the best information they shall be able to get of the
 “ probable amount of such an assessment, where none hath
 “ been already made.”

† *Sec. 93.* And by 13. Geo. 3. c. 78. f. 1. “ The said jus-
 “ tices shall and may, if they think fit, require the constables,
 “ headboroughs, tythingmen, and surveyor, of every such
 “ parish, township, and place, or any of them, to return to
 “ them, at such time and place as they shall appoint, an
 “ account, in writing, of the sum which such assessment of
 “ sixpence in the pound hath raised, or will, in his or their
 “ opinion, raise within such parish, township, or place.”

† *Sec. 94.* And by 13. Geo. 3. c. 78. f. 1. “ If the const- Assessments to be returned in writing.
 “ ables, headboroughs, tythingmen, churchwardens, survey-
 “ ors of the highway, and such householders as aforesaid, of
 “ any parish, township, or place, shall neglect or refuse to
 “ make such list as aforesaid; or if the constable, headbo-
 “ rough, or tythingman, of any parish, township, or place,
 “ shall not return the said list of names, when made, and such
 “ duplicate thereof as aforesaid, and give such notice or
 “ notices,

Penalty on
constables.

" notices, and serve such warrant or warrants as in this act is
" directed; or if the said constable, headborough, tything-
" man, and surveyor, or any of them, shall neglect to return
" such account of the amount of such assessment as aforesaid,
" when so required as aforesaid, every constable, headbor-
" ough, tythingman, churchwarden, or surveyor, so neg-
" lecting or refusing, in any of the said cases, shall, for every
" such default respectively, forfeit the sum of forty shillings."

4. Burr. 2454.

† *Stat.* 95. The Court will not compel the justices to ap-
point a surveyor out of the list returned to them by the pa-
rish, if such list has been procured by indirect and fraudulent
means, at a riotous assembly of the lower sort of people: but
they seemed to incline very strongly that it is not absolutely
necessary that the constable, headborough, tythingman, &c.
as mentioned in the act, should be present, but that the Le-
gislation only meant it to be a full parochial meeting, with-
out intending that each of these bodies should be such essen-
tial constituent parts of it, that the acts of the meeting
would be annulled and made void by the absence of those
officers.

How the assis-
tant surveyor
is to be ap-
pointed, pen-
alty for re-
fusing to serve,
and the ap-
pointment of
another in his
stead.

† *Stat.* 96. By 13. Geo. 3. c. 78. s. 2. it is further enacted,
" That in all cases where the said justices, upon neglect, or
" refusal of the person so nominated surveyor as aforesaid to
" accept the said office, shall appoint any other person for such
" surveyor, with a salary as aforesaid, the said justices shall,
" and are hereby required to appoint one substantial inha-
" bitant of such parish, township, or place, for assistant to
" such surveyor in the several matters, and for the several
" purposes hereafter mentioned, until the next annual ap-
" pointment of surveyors, according to the directions of
" this act."

† *Stat.* 97. " And if the person so appointed assistant
" shall, upon notice of such appointment, refuse to accept
" that office, he shall forfeit the sum of fifty shillings."

† *Stat.* 98. And by 13. Geo. 3. c. 78. s. 2. in that case, " I
" shall and may be lawful for such justices to appoint any
" other substantial inhabitant of such parish, township, or
" place, for assistant to such surveyor, in manner and for the
" time aforesaid; and if such second appointed assistant shall
" decline or refuse to accept the said office, he shall, in like
" manner, forfeit the sum of fifty shillings."

† *Stat.* 99. And by 13. Geo. 3. c. 78. s. 2. " The said jus-
" tices shall and may appoint any other person, inhabiting in
" such parish, township, or place, assistant to such surveyor
" wh

“ who shall be intitled to the said forfeitures herein last before mentioned, and also to some further allowance by way of salary (to be paid as the surveyor's salary is hereby directed to be paid), if the said justices shall think any such salary necessary, and shall order the same, which they are hereby authorised to do : provided, that no person so appointed assistant for one year shall be liable to be appointed assistant for the same parish, township, or place, within three years next following such first appointment, without his consent.” *

† *Stat. 100.* And by 13. Geo. 3. c. 78. f. 3. it is further enacted, “ That the surveyor of every parish, township, and place, who shall not reside therein, but shall be appointed with such salary as aforesaid, shall, if required by the churchwarden, overseer of the poor, or any principal inhabitant of the parish, township, or place, for which he shall be so appointed surveyor, at the time of his appointment, or within fourteen days after, give a bond upon paper, without stamp thereupon, to some proper person within such parish, township, or place, to be nominated by the said justices, with sufficient surety, to account for the money which shall come to his hands as surveyor, according to the directions of this act ; which bond shall be good and effectual in law.”

The surveyor to give bond for the money he shall receive.

† *Stat. 101.* And by 13. Geo. 3. c. 78. f. 5. it is further enacted, “ That if two parts out of three of those so to be assembled in any such parish, township, or place, for the nomination of surveyors, shall agree in the choice of any particular person of skill and experience to serve the said office, and in the settling of a certain salary for his trouble therein, and shall return the name of such person, together with the list herein before directed, to the sessions to be held in the week next after the Michaelmas quarter sessions ; the said justices, if they shall think proper, may appoint such person to be surveyor for such parish, township, or place, and allow him the salary mentioned in such agreement, which shall be raised and paid in the same manner as the salary herein before mentioned is directed to be raised and paid.”

How the justices shall appoint the surveyor elected by the inhabitants.

† *Stat. 102.* And by 13. Geo. 3. c. 78. f. 5. “ In case any surveyor to be appointed under the authority of this act shall die, or become incapable of executing that office, before such next special sessions for appointing surveyors, the said justices, or any two of them, shall and may, at some special sessions, nominate and appoint such person or persons as they shall think proper, to execute the said office, “ until

“until such next special sessions for appointing surveyors as aforesaid; and if such deceased surveyor had a salary, they may allow the same salary to his successor, in proportion to the time he shall serve the said office.”

† *Stat.* 103. And by 13. Geo. 3. c. 78. f. 5. “If the said justices of the peace, at their said special sessions, or at any time afterwards, pursuant to the powers of this act, shall appoint more than one person for surveyor of any parish, township, or place, all and every person or persons so appointed shall be comprehended under the word “*surveyor*” in every part of this act.”

Justices of cities, &c. only to allow such salaries as shall be fixed by inhabitant.

† *Stat.* 104. But by 13. Geo. 3. c. 78. f. 55 it is provided, “That nothing in this act contained shall authorize or empower, or be deemed, construed, or taken to authorize and empower, any justice or justices of the peace, for any city, town corporate, or borough, to fix or allow any salary to or for any surveyor to be appointed by any such justice or justices, other than and except such salary as shall be settled and agreed upon by two parts out of three of the persons assembled in the parish, township, or place, within such city, town corporate, or borough, for which such surveyor shall be appointed, pursuant to the directions of this act.”

AS TO THE FIFTH GENERAL HEAD of this Chapter, *viz.* In what manner the surveyors of the highways ought to execute their office.

Duty of the assistant surveyor.

† *Stat.* 105. It is enacted by the same statute of 13. Geo. 3. c. 78. f. 4. “That the assistant, so to be nominated and appointed, shall assist the said surveyor, whenever requested by him, in calling in and attending the performance of the statute-duty; in collecting the compositions, fines, penalties, and forfeitures; in making and collecting the assessment; in making out and serving the notices authorized by this act; and in such other matters and things as shall be reasonably required of him by the surveyor, in the execution of his office as surveyor, pursuant to this act: and the said assistant shall account with, and pay to, the surveyor, or to his order, all the money which shall come to his hands as assistant, by the means as aforesaid; and in default thereof, he shall forfeit double the value of the money by him so received, and not so paid and accounted for; and if the said assistant shall wilfully neglect or make default in the performance of any of the duty required from him by this act, he shall forfeit, not exceeding five pounds,
“nor

“ nor less than forty shillings, at the discretion of the justice or justices of the limit within which such assistant shall be appointed.”

† *Sect. 106.* And by 13. Geo. 3. c. 78. f. 4. “ The said surveyor shall send orders, in writing, upon the said assistant, for the payment of all sums due to any person or persons, for work or materials, which amount to forty shillings, or upwards; and the said surveyor shall not be responsible for any sum or sums of money which shall be received by the said assistant, and shall not be actually paid to such surveyor, or to his order as aforesaid.”

The surveyor may draw upon the assistant for sums under 4cs.

† *Sect. 107.* By 13. Geo. 3. c. 78. f. 12. it is further enacted, “ That the surveyors shall, as they shall judge proper, view all the common highways, trunks, tunnels, plats, hedges, ditches, banks, bridges, causeways, and pavements, within the parish, township, or place, for which they shall be appointed surveyors; and in case they shall observe any nuisances, encroachments, obstructions, or annoyances, made, committed, or permitted, in, upon, or to the prejudice of them, or any of them, contrary to the directions of this act, they shall give, or cause to be given, to any person or persons, doing, committing, or permitting the same, personal notice, or notice in writing, to be left at his, her, or their usual place or places of abode, specifying the particulars wherein such nuisances, defaults, obstructions, or annoyances, consist; and if such nuisances, obstructions, or annoyances shall not be removed, and the ditches, drains, gutters, and water-courses aforesaid effectually made, scoured, cleansed, and opened, and such trunks, tunnels, plats, and bridges, made and laid, and such hedges properly cut and pruned, within twenty days after such notice of the same respectively given as aforesaid, then the said surveyors shall remove such nuisances, obstructions, or annoyances, and open, cleanse, and scour such ditches, gutters, and water-courses, and make or amend such trunks, tunnels, plats, or bridges, and cut and prune such hedges, for the benefit and improvement of the said highways; and the person or persons so neglecting to make or open and cleanse such ditches, gutters, or water-courses, or to cut or prune such hedges, during the time aforesaid, after such notice given, shall forfeit, for every foot in length, which shall be so neglected, the sum of one penny.”

Surveyors duty in view of highways, in respect to nuisances, &c.

Vide Salk.

357. where it was adjudged on the 22. Car. 2. c. 12. par. 12. that the justices ought to fix the particular days, and not generally appoint the time between such a day and such a day.

† *Sect. 108.* And by 13. Geo. 3. c. 78. f. 12. “ The said surveyors shall be reimbursed what charges and expences they shall be at in removing such nuisances, obstructions,

The surveyor shall be repaid his charges for removing nuisances.

“ or

“ or annoyances, and making or opening, cleansing and
 “ scouring, such ditches, gutters, and water-courses, and in
 “ making or amending such trunks, tunnels, plats, or
 “ bridges, and in cutting and pruning such hedges respec-
 “ tively, by the person or persons who ought to have done
 “ the same, over and above the said forfeiture.”

And if the
 party refuse
 to pay, the
 money may
 be assessed and
 levied.

+ *Stat.* 109. And by 13. Geo. 3. c. 78. s. 12. “ In case such
 “ person or persons shall, upon demand, refuse or neglect to
 “ pay the said surveyor his charges and expences occasioned
 “ thereby respectively, and also the said forfeiture of one
 “ penny *per* foot, then the said surveyor shall apply to any
 “ justice of the peace, and, upon making oath before him of
 “ notice being given to the defaulter in manner aforesaid, and
 “ of the said work being done by such surveyor, and of the
 “ expences attending the same, the said surveyor shall be re-
 “ paid by such person or persons all such his said charges as
 “ shall be allowed to be reasonable by the said justice; or, in
 “ default of payment thereof on demand, the same shall be
 “ levied in such manner as the penalties and forfeitures
 “ hereby inflicted are directed to be levied.”

How high-
 ways by re-
 pair, &c. may
 be ordered to
 be repaired.

+ *Stat.* 110. And by 13. Geo. 3. c. 78. s. 23. it is further
 enacted, “ That every surveyor shall give information upon
 “ oath to the said justices, or any two or more of them, of
 “ all such highways, and of all bridges, causeways, or pave-
 “ ments, upon such highways, as are out of repair, and
 “ ought to be repaired by any person or persons, bodies po-
 “ litic or corporate, by reason of any grant, tenure, limita-
 “ tion, or appointment, of any charitable gift, or otherwise
 “ howsoever; and the said justices shall limit a time for re-
 “ pairing the same, of which notice shall be given by the said
 “ surveyor to the occupier or occupiers of the lands and te-
 “ nements liable to the burthen of such repairs, or to such
 “ other person or persons, bodies politic or corporate, as
 “ are chargeable with the same; and if such repairs shall
 “ not be effectually made within the time so limited, the said
 “ justices shall, and are hereby required to present such high-
 “ ways, bridges, causeways, or pavements to out of repair,
 “ together with the person or persons, bodies politic or
 “ corporate, liable to repair the same, at the next general
 “ quarter sessions of the peace for the limit wherein such
 “ highway shall lie; and the justices at such quarter sessions
 “ may, if they see just cause, direct the prosecution to be
 “ carried on at the general expence of such limit, and to be
 “ paid out of the general rates within the same.”

Wade v. Black.
 602.

+ *Stat.*

† *Sec. 111.* And by 13. Geo. 3. c. 78. s. 25. it is further enacted, "That the said justices, at any special sessions to be held by virtue of this act, may, by writing under their hands and seals, order and appoint those highways (not being turnpike road), which in their opinion do most want repair within their jurisdiction, to be first amended, and at what time, and in what manner, the same shall be amended; according to which order, if such there be, all and singular the respective surveyors of the said highways are hereby required to proceed within their respective liberties."

Justices may order which highways shall be first repaired.

† *Sec. 112.* And by 13. Geo. 3. c. 78. s. 26. for the better convenience of travellers where several highways meet, it is further enacted, "That the said justices, at some special sessions to be held for the purposes of this act, shall issue their precept to the surveyor of the highways for any parish, township, or place, where several highways meet, and there is no proper or sufficient direction post or stone, already fixed or erected, requiring him forthwith to cause to be erected or fixed, in the most convenient place where such ways meet, a stone or post, with inscriptions thereon, in large legible letters, painted on each side thereof, containing the name or names of the next market town or towns, or other considerable place or places, to which the said highways respectively lead; and also at the several approaches or entrances to such parts of any highways as are subject to deep or dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part of the same, and likewise such direction posts or stones, as the said justices shall judge to be necessary, for the guiding of travellers in the best and safest track through the said floods or waters; and the said surveyor shall be reimbursed the expences of providing and erecting the same respectively out of the monies which shall be received by him or them, pursuant to the directions of this act; and in case any surveyor shall, by the space of three months after such precept to him directed and delivered, neglect or refuse to cause such stones or posts to be fixed, as aforesaid, every such offender shall forfeit the sum of twenty shillings."

posts where and how to be erected.

† *Sec. 113.* And by 13. Geo. 3. c. 78. s. 27. for the better repairing, and keeping in repair, the said highways, and providing of materials for that purpose, it is enacted, "That it shall and may be lawful to and for every surveyor, to be appointed as aforesaid, to take and carry away, or cause to be taken and carried away, so much of the rubbish, or refuse-stones of any quarry or quarries, lying and being within the parish, township, or place, where he shall be surveyor

Materials where and in what manner to be taken.

" surveyor (except such as shall have been got by the surveyor of any turnpike road), without the licence of the owner or owners of such quarries, as they shall judge necessary for the amendment of the said highways, but not to dig or get stone in such quarry without leave of the owner thereof."

The surveyors may dig gravel, chalk, &c. in the waste lands and brooks of the parish, making satisfaction for damages done in taking them away.

† *Stat.* 114. And by 13. Geo. 3. c. 78. s. 27. it is also enacted, " That it shall and may be lawful for every such surveyor, for the use aforesaid, in any waste land or common ground, river or brook, within the parish, township, or place, for which he shall be surveyor, or within any other parish, township, or place, wherein gravel, sand, chalk, stone, or other materials, are respectively likely to be found (in case sufficient cannot be conveniently had within the parish, township, or place, where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish, township, or place), to search for, dig, get, and carry away the same, so that the said surveyor doth not thereby divert or intercept the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of one hundred feet above or below any bridge, nor within the like distance of any dam or wear; and likewise to gather stones lying upon any lands or grounds within the parish, township, or place, where such highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, without making any satisfaction for the said materials; but satisfaction shall be made for all damages done to the lands or grounds of any person or persons, by carrying away the same, in the manner herein after directed, for getting and carrying materials in inclosed grounds, but no such stones shall be gathered without the consent of the occupier of such lands or grounds, or a licence from a justice of peace for that purpose, after having summoned such occupier to come before him, and heard his reasons, if he shall appear and give any, for refusing his consent."

Not to extend to stones thrown up by the sea, called Beach.

† *Stat.* 115. But by 13. Geo. 3. c. 78. s. 28. it is provided, " That nothing in this act contained, relative to the gathering or getting of stones, shall extend to any quantity of land (being private property), covered with stones thrown up by the sea, commonly called beach."

† *Stat.*

† *Stat. 116.* And by 13. Geo. 3. c. 78. s. 29. it is further enacted, "That every such surveyor, for the use aforesaid, may search for, dig, and get sand, gravel, chalk, stone, or other materials, if sufficient cannot conveniently be had within such waste lands, common grounds, rivers, or brooks, in and through any of the several or inclosed lands or grounds of any person or persons whomsoever, within the parish, township, or place, where the same shall be wanted, or by licence from two justices of the peace, at a special sessions, within any other parish, township, or place, adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish, township, or place, where such highways lie, or in the waste lands or common grounds, rivers or brooks, of such adjacent parish, township, or place, and that a sufficient quantity of materials will be left for the use of the parish, township, or place, where the same shall be (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation), and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways; the said surveyor making such satisfaction for the damage to be done to such lands or grounds by the getting and carrying away the same, as shall be agreed upon between him and the owner, occupier, or other person interested in such lands or grounds respectively, in the presence, and with the approbation of two or more substantial inhabitants of such parish, township, or place; and in case they cannot agree, then such satisfaction and recompence shall be settled and ascertained by order of one or more justice or justices of the peace of the limit where such land or ground shall lie."

If sufficient materials cannot be found in waste lands, &c. the surveyor may take them from several or inclosed lands or grounds in the parish, or in any parish near the highway, with the licence of two justices at special sessions, making satisfaction to the owners.

† *Stat. 117.* And by 13. Geo. 3. c. 78. s. 29. "In such places where, from the want of other materials, burnt clay may be substituted in the place thereof, it shall and may be lawful for the surveyor to dig clay in such places as he is hereby authorised to dig chalk or gravel, and to dry the same upon the lands adjoining, and to burn the same upon any waste lands or common grounds, and to carry such clay in such manner as other materials are allowed to be carried by this act, upon making such satisfaction for the damages within the several inclosed lands or grounds where such clay shall be placed or carried, as herein directed with regard to other materials."

Clay may be got and burnt into materials for repairing the highways.

But if the owner of the inclosed land want the materials, he must give notice to the surveyor.

† *Stat.* 118. But by 13. Geo. 3. c. 78. s. 20. it is provided, "That when the owner of any such inclosed lands shall have occasion for any such materials lying within the same for the repair of any highway, or other roads or ways upon his estate, or which he shall be under obligation to repair, and shall give notice to such surveyor that he apprehends there will not be sufficient for those purposes, and also for the use of the public highways, then, and in every such case, the surveyor shall not be permitted to dig or take such materials without the consent of such owner, or an order of two justices of the peace, after having summoned and heard the said owner or occupier, or his steward or agent; which justice are hereby authorized to enquire into the nature and circumstances of the case, and to permit or restrain such power, in such manner, and under such directions, as to them shall seem just."

It hath been adjudged upon this clause of the statute,

Rex v. Manning, 1. Burr. 382.

† *Stat.* 119. FIRST, That an order of sessions must shew that there were no proper materials to be found in or upon the wastes or common grounds near the highway, for the surveyors are not warranted to dig in the private soil for all the species of materials, because some of these species are not to be found in or upon the said wastes or common ground, and that it ought to specify what cannot be found in or upon the wastes or common grounds, and what may be found in the private soil, and that they must previously know that it is to be found there; or at least have a reasonable prospect of finding it there, for that they cannot dig to try for it in the private soil.

1. Burr. 382.

† *Stat.* 120. SECONDLY, That an order of sessions to dig generally is bad, for they must fix upon a particular part, and not leave it to the discretion of the surveyor.

1. Burr. 382.

† *Stat.* 121. THIRDLY, That a session must be awarded to the owner or to the occupier or to both, according to the damages sustained by the one, or by the other, or by both.

† *Stat.* 122. FOURTHLY, That notice to the occupier is sufficient, and it is sufficient to state, that it was left at his place of abode.

If pits or holes are made in getting materials, the surveyor shall cause them to be filled up or fenced off.

† *Stat.* 123. Also by 13. Geo. 3. c. 78. s. 31. it is enacted, "That if any surveyor, or person employed by him, shall by licatlon of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials for repairing any highways, make, or cause to be made, any pit or hole in any such lands or grounds, rivers or brooks,

“ as aforesaid, wherein such materials shall be found, such
 “ surveyor, person or persons, shall forthwith cause the same
 “ to be sufficiently fenced off, and such fence supported
 “ and repaired, during such time as the said pit or hole shall
 “ continue open, and shall, within three days after such pit
 “ or hole shall be opened or made, where no gravel, stones,
 “ or materials, shall be found, cause the same to be forth-
 “ with filled up, levelled, and covered with the turf or clod
 “ which was dug out of the same ; and where any such ma-
 “ terials shall be found, within fourteen days after having
 “ dug up sufficient materials in such pit or hole, cause the
 “ same to be filled up, sloped down, or fenced off, and so
 “ continued.”

† *Stat.* 124. And by 13. Geo. 3 c. 78. s. 31. “ Every sur-
 “ veyor shall, within twenty days after he shall be appointed
 “ to that office, cause all the said pits and holes which shall
 “ then be open, and not likely to be further useful, to be
 “ filled up or sloped down, in manner aforesaid ; and if they
 “ are likely to be further useful, he shall secure the same by
 “ posts and rails, or other fences to prevent accidents to
 “ persons or cattle.”

† *Stat.* 125. And by 13. Geo. 3. c. 78. s. 31. “ In case or forfeit 10s.
 “ such surveyor, person or persons, shall neglect to fill for every neg-
 “ up, slope down, or fence off, such pit or hole, in man- lect:
 “ ner and within the time aforesaid, he or they shall forfeit
 “ the sum of ten shillings for every such default.”

† *Stat.* 126. And by 13. Geo. 3. c. 78. s. 31. “ In case and for every
 “ such surveyor, person or persons, shall neglect to fence neglect after
 “ off such pit or hole, or to slope down the same, as herein notice,
 “ before directed, for the space of six days after he or they
 “ shall have received notice for either of those purposes
 “ from any justice of the peace, or from the owner or oc-
 “ cupier of such several ground, river, or brook, or any
 “ person having right of common within such common or
 “ waste lands, as aforesaid, and such neglect and notice
 “ shall be proved upon oath before one or more of the said
 “ justices of the peace, such surveyor, person or persons, a sum not ex-
 “ shall forfeit and pay any sum not exceeding ten pounds, ceeding 10l.
 “ nor less than forty shillings, for every such neglect ; to nor less than
 “ be determined and adjudged by such justice or justices, 4s.
 “ and to be laid out and applied in the fencing off, filling
 “ up, or sloping down, such pit or hole, and toward the
 “ repair of the roads in the parish, township, or place,
 “ where the offence shall be committed, in such manner as
 “ the said justice or justices shall direct and appoint ;
 “ which forfeiture, in case the same be not forthwith
 Vol. II. O “ paid,

“ paid, shall be levied as other forfeitures are herein-after directed to be levied.”

How materials for another parish shall be removed.

† *Stat.* 127. But by 13. Geo. 3. c. 78. s. 32. it is provided, “ That no stone, gravel, or materials, to be dug for the use of any other parish, township, or place, than that wherein the same are found, shall be removed or carried from the place where they shall be so dug at any other time than between the first day of *April* and the first day of *November*, or in the time of hard frost in the winter season.”

Damaging mills, &c.

† *Stat.* 128. And by 13. Geo. 3. c. 78. s. 33. it is further enacted, “ That if any person shall dig, or cause to be dug, materials for the highways, contrary to the direction of this act, whereby any bridge, mill, building, dam, highway, ford, mines, or tin-works, may be damaged or endangered; every offender therein shall forfeit, for every such offence, any sum not exceeding five pounds, nor less than twenty shillings, at the discretion of the court or justices before whom complaint thereof shall be made.”

The surveyor's duty is to keep books, and enter the accounts of all money paid and received;

† *Stat.* 129. By 13. Geo. 3. c. 78. s. 48. it is enacted, “ That the surveyor shall collect the several assessments, forfeitures, penalties, sums of money, and compositions, to be received and taken by virtue of this act, within the year for which he is appointed surveyor, and shall keep one or more book or books, in which he shall faithfully enter a just, true, and fair account of all such money as shall have come to his hands, or to the hands of the said assistant, and to whom, and on what occasion, he shall have paid or applied the same; and shall also enter in such book or books a list or lists of all such sums of money as shall then remain due and owing from any person or persons, in respect of the payments, compositions, assessments, penalties, or forfeitures, to be collected, received, or taken, for and in respect of the said highways, by virtue of this act: and the said surveyor shall also enter an account of all tools, materials, implements, and other things provided, by order of the inhabitants, at a vestry, or other public meeting, for the repair of the said highways, at the public expence of such parish, township, or place; and shall produce such books, and the assessments made within that year, unto the inhabitants to which they belong, at a vestry or other public meeting to be held for that purpose, within fifteen days before the said special sessions to be held in the week next after *Michaelmas* quarter sessions, as aforesaid, to the intent that

and also of a money remaining due

Also of all tools, materials, &c.

and shall produce his accounts at a vestry meeting;

“ the

“ the said accounts, assessments, and lists, may be inspected
“ by the inhabitants.”

† *Stat.* 130. And by 13. Geo. 3. c. 78. f. 48. “ Every and after-
“ such surveyor shall, after the said books and assessments w^ods before
“ shall have been produced at such meeting, take the same to a justice of
“ such justice of the peace for the limit wherein such parish, peace, who
“ township, or place, doth lie, and on such day, and at such may allow
“ hour, as shall be agreed upon at such meeting, some day them :
“ after the said meeting of the inhabitants, and before such
“ last-mentioned special sessions, and then and there verify
“ such account, or any part thereof, upon oath, if required.”

† *Stat.* 131. And by 13. Geo. 3. c. 78. f. 48. “ Such jus- or they may
“ tice may allow such account if he finds it just, or post- be further ex-
“ pone it until such special sessions, if he finds cause for so amined and al-
“ doing ; in which case it may be settled and allowed at such lowed, or dis-
“ special sessions, after the parts objected to by such justice allowed, at the
“ shall have been explained and verified by proper evidence, special ses-
“ to the satisfaction of the justices at such special sessions ; sions.
“ and in case any articles contained in such accounts shall
“ not be explained and proved to the satisfaction of such
“ justices, they may disallow the same ; and whenever the
“ said accounts shall be so settled and allowed, or disallow-
“ ed, as aforesaid, all such books and assessments shall be
“ transmitted to the churchwarden or overseer of the poor
“ for such parish, township, or place, respectively, or, if
“ the place be extraparoehial, then to some principal inha-
“ bitant thereof, to be kept for the use of such parish,
“ township, or place.”

† *Stat.* 132. The general quarter sessions have no origi- 2. Burr. 746.
nal jurisdiction respecting the passing the surveyor's ac-
count, and paying over the balances to the successor.
Therefore, where an order for this purpose was made at the
general quarter sessions, even by the consent of the special
session it was quashed ; for consent cannot give original ju-
risdiction to a court that has only an appellate jurisdic-
tion.

† *Stat.* 133. And by 13. Geo. 3. c. 78. f. 48. “ The said Books, mate-
“ surveyor shall forthwith deliver a duplicate of such book rials, tools, &c.
“ and account, together with all sums of money as shall to be delivered
“ remain in his hands, and likewise all tools, materials, to the suc-
“ implements, and other things, as aforesaid, to the suc- ceeding sur-
“ ceeding surveyor for such parish, township, or place, in veyor.
“ case any new surveyor shall be appointed, or retain the New surveyor
“ same in his hands, and account for them in his next ac- authorized to
“ count, if he shall be continued surveyor for such parish, collect the ar-
“ town- rear, &c.

“ tounship, or place, in the succeeding year ; and the succeeding surveyor is hereby required to recover, collect, and receive all such sums of money which shall be due and owing as aforesaid, by all such ways and means, as fully and effectually, to all intents and purposes, as the preceding surveyor could, might, or ought to have recovered, collected, or received the same.”

The surveyor liable to forfeitures for neglect of duty.

† *Stat.* 134. And by 13. Geo. 3. c. 78. f. 48. “ In case such surveyor shall neglect to provide such book or books, or to enter such respective accounts and lists therein, or to deliver the said book or books, and such duplicate thereof, and such assessments, tools, materials, implement, and other things, in manner aforesaid, he shall, for every such offence, forfeit not exceeding five pounds, nor less than forty shillings.”

† *Stat.* 135. And by 13. Geo. 3. c. 78. f. 48. “ In case he shall make default in the paying or accounting for the money so remaining in his hands, within the time, and according to the directions aforesaid, he shall forfeit double the value of the money which shall be adjudged by the said justices to be in his hands.”

If surveyor dies, his executors, &c. shall account in the same manner.

† *Stat.* 136. And by 13. Geo. 3. c. 78. f. 48. “ In case any such surveyor shall die before such respective accounts and lists shall be made out, or such monies, books, assessments, tools, materials, and implements, shall be so delivered and paid, the executors or administrators of such surveyor shall make out, pay, and deliver the same, in like manner, and under the like penalty, as such surveyor is hereby required and made subject and liable to.”

Fees to be paid to the justices clerks.

† *Stat.* 137. And by 13. Geo. 3. c. 78. f. 48. “ Every surveyor shall pay to the justices clerks, for the appointment and charge, the sum of one shilling ; for the bond, sixpence, and for the account so to be examined and taken, and for the oath so to be administered, the sum of one shilling, and no more ; and if any person or persons shall receive any greater sum or fee for the business aforesaid than herein-before mentioned, he shall forfeit the sum of ten pounds for every offence.”

How materials may be contracted for.

† *Stat.* 138. By 13. Geo. 3. c. 78. f. 50. it is also enacted, “ That where a sufficient quantity of stone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams required by this act to perform statute duty, the surveyor shall contract for the getting and carrying thereof, (in the presence of the said alldistant,
“ if

“if any such shall be appointed), at a meeting to be held
 “for that purpose, of which ten days notice in writing
 “shall be given, by fixing the same upon the door of the
 “church or chapel of the parish, township, or place, or
 “if there be no church or chapel, at the most public place
 “there; which notice shall specify the work to be done,
 “and the time and place for letting thereof.”

† *Seet.* 139. And by 13. Geo. 3. c. 78. f. 50. “If any surveyor shall have any part, share, or interest, directly or indirectly, in any such contract, or in any other contract or bargain for work or materials to be made, done, or provided, upon, for, or on account of any of the highways, roads, bridges, or other works whatsoever, under his care or management, or shall, upon his own account, directly or indirectly, let to hire any team, or sell or dispose of any timber, stone, or other materials, to be used or employed in making or repairing such roads, bridges, or other works, as aforesaid (unless a licence, in writing, for the sale of any such materials, or to let to hire any such team, be first obtained from some justice of the peace within that limit), he shall forfeit, for every such offence, the sum of ten pounds, and be for ever after incapable of being employed as a surveyor with a salary, under the authority of this act.”

† *Seet.* 140. And by 13. Geo. 3. c. 78. f. 51. it is further enacted, “That if any surveyor of the highways, after his acceptance of the said office, shall neglect his duty in any thing required of him by this act, for which no particular penalty is imposed, he shall forfeit, for every such offence, any sum not exceeding five pounds, nor less than ten shillings, at the discretion of the justice or justices having jurisdiction therein.” Penalty upon the surveyor.

† *Seet.* 141. Also by 13. Geo. 3. c. 78 f. 54. “The justices of the peace of all cities, corporations, boroughs, or other places, are hereby required to put in execution every part of this act within their respective jurisdictions.” Justices of cities to put the act in execution.

† *Seet.* 142. And by 13. Geo. 3. c. 78. f. 44. it is recited, “That whereas, by several acts of parliament concerning turnpike roads (5), a certain part of the duty called statute duty is or may be directed to be performed on such roads, and it may happen in some places, that the several persons liable thereto may have compounded for the same,” it is therefore further enacted, “That in all such cases, the surveyor of highways, where such composition shall Where the surveyor receives money due to the turnpike roads, he shall pay it to the treasurer. (6) Vide the end of this chapter.

"shall have been made, shall pay to the treasurer or surveyor of such turnpike roads a certain part of the composition-money so received, to be proportioned according to the number of days which such person or persons was or were liable to perform on such turnpike road; which money shall be laid out and expended on such part of the said turnpike road as lies within the parish, township, or place, from which it was received, and not elsewhere."

How the same shall be applied.

+ *Stat.* 143. And by 13. Geo. 3. c. 78 f. 44. "If such surveyor of the highways shall refuse or neglect to pay to the treasurer or surveyor of such turnpike road such part of the said composition-money so received by him, within twenty days after he shall have received the same, upon demand made by such treasurer or surveyor, the same shall and may be levied on the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by this act authorized to be levied."

As to THE SIXTH GENERAL HEAD of this chapter, *viz.* What shall be said to be a nuisance to the highway, I shall consider:

1. What shall be said to be such a nuisance at common law.
2. What by statute.

As to THE FIRST POINT, *viz.* What shall be said to be a nuisance to a highway at common law.

Stat. 34, 35.

Stat. 144. There is no doubt but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it less commodious to the king's people, are public nuisances at common law.

* *R. Abr.* 137. 265.

Stat. 145. Also it seemeth to be clear, that it is no excuse for one who layeth such logs in the highway that he laid them only here and there, so that the people might have a passage by windings and turnings through the logs; yet it is said to be no nuisance for the inhabitants of a town to unlade billets, &c. in the street before their houses, by reason of the necessity of the case, unless they suffer them to continue there an unreasonable time after they are unloaded.

* *R. Abr.* 137.

Secl. 146. There is no doubt but that it is a nuisance at common law to erect a new gate in a highway, as has been more fully shewn in the precedent chapter.

84 H. 7. 5.
Kitch. 34. 35.
8. H. 7. 5.

Secl. 147. Also it seemeth clear, that it is a like nuisance to suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, or to suffer the boughs of trees growing near the highway to hang over the road, in such a manner as thereby to incommode the passage.

As to THE SECOND POINT, *viz.* What shall be said to be a nuisance to the highway by statute.

Secl. 148. Not only all the abovementioned nuisances, which are such at common law, are esteemed also nuisances by statute, but there is also one particular nuisance which is made such by statute, and doth not seem to be taken notice of by common law, and that is the drawing of a travelling carriage with more than six horses in length, (a) the permitting whereof hath occasioned the carrying of such excessive loads in such carriage, that the weight thereof hath in many places rendered the roads unpassable.

(a) For the number now permitted to be drawn, vide *infra*, secl. 165.

As to THE SEVENTH GENERAL HEAD of this chapter, *viz.* How such nuisances are to be removed and punished, I shall consider the following particulars.

1. In what order hedges and ditches, adjoining to the highway, ought to be kept.
2. How far all trees and bushes are to be removed from the highway.
3. In what manner all other annoyances obstructing the highway are to be removed.
4. How far all persons are punishable for taking away things made use of for the benefit of the highway.
5. How far they may be punished for drawing a carriage with more than five horses in length.
6. How far drivers of carriages are punishable for misbehaviour.

As to the first particular, *viz.* In what order hedges and ditches, adjoining to the highway, ought to be kept.

3. Hen. 7. 5. *See* §. 149. It is said, that he who hath lands next adjoining to the highway, is bound of common right to scour his ditches; but it is said, that he who hath lands next adjoining to such lands, is not bound by the common law so to do, without some special prescription for that purpose; and perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same: and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nuisance.

Trees adjoining to highways, by whom and in what manner to be cut and pruned.

† *See* §. 150. By 13. Geo. 3. c. 78. s. 7, however it is enacted, That the possessors of the land next adjoining to every highway shall cut, prune, and plash their hedges, and also cut down or prune and lop the trees growing in or near such hedges or other fences, (except those trees planted for ornament or shelter, as hereafter mentioned) in such manner that the highways shall not be prejudiced by the shade thereof respectively, and that the sun and wind may not be excluded from such highway to the damage thereof, within ten days after notice given by the surveyor for that purpose, or the surveyor shall make complaint thereof to some justice of the limit, who shall summon the possessor of the said lands to some special sessions, to answer to the said complaint; and if it shall appear to the justices that such possessor had not complied with the requisites of this act, the said justices, upon hearing the surveyor and the possessor of such land, or his agent, (or in default of his appearance, upon having due proof of the service of such summons), and considering the circumstances of the case, may order such hedges to be cut, plashed, and pruned, and such trees to be cut down, or pruned in such manner, as may best answer the purposes aforesaid; and if the possessor of such lands shall not obey such order within ten days after due notice thereof, he shall forfeit two shillings for every twenty-four feet in length of such hedge which shall be so neglected to be cut and plashed, and two shillings for every tree which shall be so neglected to be cut down or pruned, and lopped."

On default the surveyor may prune, &c. at the cost of the defaulter.

† *See* §. 151. And by 13. Geo. 3. c. 78. s. 7. "The surveyor, in case of such default, shall cut, prune, and plash such hedges, and cut down or prune and lop such trees in the manner directed by such order; and such possessor shall

“ shall be charged with, and pay, over and above the said penalties, the charges and expences of doing the same ;
 “ or, in default thereof, such charges and expences shall be levied, together with the said forfeitures, upon his or her goods and chattels, by warrant from a justice of peace, in such manner as is authorized for forfeitures incurred by virtue of this act.”

† *Stat.* 152. And by 13. Geo. 3. c. 78. f. 8. it is further enacted, “ That ditches, drains, or watercourses, of a sufficient depth and breadth, for the keeping all highways dry, and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges, shall be made and laid where any cartways, horseways, or footways, lead out of the said highways into the lands or grounds adjoining thereto, by the occupier of such lands or grounds ; and every person who shall occupy any lands or grounds adjoining to, or lying near such highway through which the water hath used to pass from the said highway, shall open, cleanse, and scour the ditches, watercourses, or drains, for such water to pass without obstruction ; and that every person making default, after ten days notice by the surveyor, shall forfeit ten shillings.”

Occupiers to make drains and ditches, &c.

† *Stat.* 153. And by 13. Geo. 3. c. 78. f. 14. it is further enacted, “ That where the ditches, gutters, or watercourses, shall not be sufficient to carry off the water which shall lie upon and annoy the highways, the surveyors, by the order of any one of the said justices, shall make new ditches and drains in and through the lands and grounds adjoining or lying near to such highways, or in and through any other lands or grounds, if it shall be necessary, for the more easy and effectually carrying off such water from the said highways, and also to keep such ditches, gutters, or watercourses, scoured, cleansed, and opened ; and the surveyors, and their workmen, are authorized to go upon the lands, for the purposes aforesaid.”

Where the old ditches &c. are not sufficient, new ones are to be made.

† *Stat.* 154. And by 13. Geo. 3. c. 78. f. 14. “ The surveyors shall make proper trunks, tunnels, plats, bridges, or arches, over such ditches, gutters, or watercourses, for the convenient use and enjoyment of the lands or grounds through which the same shall be made, and keep the same in repair, and make satisfaction to the owner or occupier of such lands which are not waste or common, for the damages sustained thereby ; to be settled and paid in such manner as the damages for getting materials in

Surveyors to make trunks, &c.

several

"several or inclosed lands or grounds are hereafter directed to be fettled and paid."

As to the second particular, *viz.* How far all trees and bushes are to be removed from the highway.

No tree, bush, or shrub, to grow within 15 feet of the centre, &c.

+ *Stat.* 155. By 13. Geo. 3. c. 78. f. 6. it is enacted, "That no tree, bush, or shrub, shall be permitted to stand or grow in any highways within the distance of fifteen feet from the centre thereof (except for ornament or shelter to the house, building, or court yard of the owner thereof); or hereafter to be planted within the distance aforesaid; but the same shall be respectively cut down, grubbed up, and carried away by the owner or occupier of the land or soil, where the same doth or shall stand or grow, within ten days after notice to him, or his steward or agent, given by the said surveyors, or any of them, on pain of ten shillings."

Times of cutting hedges, and felling trees, &c.

+ *Stat.* 156. But by 13. Geo. 3. c. 78. f. 13. it is provided, "That no person shall be compelled, nor any surveyor permitted to cut or prune any hedge, other than between the last day of *December* and the last day of *March*, and that nothing in this act contained shall oblige any person to fell any timber trees, in hedges, at any time whatsoever, except where the highways shall be ordered to be enlarged, or to cut down or grub up any oak trees growing within such highway, or in such hedges, except in the months of *April*, *May*, or *June*, or any ash, elm, or other trees, in any other months than in the months of *December*, *January*, *February*, or *March*."

As to the third particular, *viz.* In what manner all other annoyances obstructing the highway are to be removed.

1. Jones 222.

Stat. 157. It seems clear, that by the common law any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use, as hath been more fully shewn in the precedent chapter.

Vide 4. Affize

3.
17. Ed. 3. c. 7. b.
2. Rol. Abr.
137. B. 4.
142. K. L.

Also it seemeth, that an heir may be indicted for continuing an incroachment, or other nuisance to a highway, begun by his ancestor, because such a continuance thereof amounts in the judgment of law to a new nuisance,

+ *Stat.* 158. But the common law, not having been thought to have provided sufficiently against mischiefs of that kind, it is enacted by the abovementioned statute of 13.

Geo. 3.

Geo. 3. c. 78. s. 9. "That if any person shall lay, in any highway, any stone, timber, straw, dung, or other matter, or in making, scouring, or cleansing, the ditches, drains, or watercourses, shall permit the soil or earth dug out of such ditches, drains, or watercourses, to remain in such highway in such manner as to obstruct or prejudice the same, for the space of five days after notice thereof by the surveyor, he shall forfeit ten shillings."

Penalty for
nuisances ob-
structing
highways.

† *Stat.* 159. And by 13. Geo. 3. c. 78. s. 10. it is further enacted, "That if any stone or timber, or any hay, straw, stubble, or other matter, for the making of manure, or on any other pretence whatsoever, not tolerated by this act, shall be laid in any highway, within the distance of fifteen feet from the centre thereof, and shall not, within five days after notice by the surveyor, or some person aggrieved thereby, be removed, the owner or possessor of the lands adjacent, or any other person whomsoever, by order from some justice, may remove the said stone, timber, hay, straw, dung, or other matter, and have, take, and dispose of the same, to his and their own use."

If not re-
moved after
notice, how to
be disposed of.

† *Stat.* 160. And by 13. Geo. 3. c. 78. s. 11. for preventing obstructions in the said highways, it is enacted, "That if any person shall wilfully set, place, or leave any waggon, cart, or other carriage, or any plough or instrument of husbandry, in any of the said highways, (except during the reasonable time of loading or unloading, and standing as near the side of such highway as possible) so as to interrupt or hinder the free passage of any other carriage, or of his majesty's subjects, every person so offending shall forfeit ten shillings."

Obstructions
to highways
by carriages,
&c.

† *Stat.* 161. And by 13. Geo. 3. c. 78. s. 64. it is further recited, "That whereas inconveniencies have arisen from making hedges or other fences, and from ploughing or breaking up the soil of lands or grounds near the middle or centre of highways:" for remedy thereof, it is enacted, "That if any person shall incroach, by making any hedge, ditch, or other fence, on any highway, not being turnpike road, within the distance of fifteen feet from the middle or centre thereof, or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands, shall turn his plough in or upon any land or ground within the distance of fifteen feet from the middle or centre of any highway, where the breadth of such highway is formed and marked, or described with certainty, and does not exceed in breadth

Penalty of in-
crouching
upon high-
way..

" thirty

"thirty feet, he shall forfeit forty shillings to such person who shall make information of the same."

Incroachment to be taken down by surveyor.

† *Stat.* 162. And by 13. Geo. 3. c. 78. s. 64. it is also enacted, "The surveyor may cause such hedge, ditch, or fence to be taken down, or filled up, at the expence of the person to whom the same shall belong; and any justice of the limit, upon proof to him upon oath, may levy as well the expences of taking down such hedges, as the several penalties hereby imposed, by distress and sale of the offender's goods and chattels."

Alehouses not suffered on bridges where tolls are kept.

† *Stat.* 163. And by 13. Geo. 3. c. 78. s. 63. for preventing obstructions, which frequently happen by stopping of carriages on or near public bridges, it is further enacted, "That if any person collecting any tolls payable for passing over any public bridge with carriages or cattle of any kind shall keep any victualling-house, alehouse, or other place of public entertainment, or shall sell, or permit to be sold therein, any wine, beer, ale, cyder, spirituous liquors, or other strong liquors, by retail, he, being convicted by one witness, or his own confession, before any justice of the limit, shall forfeit five pounds."

As to the fourth particular, *viz.* How far all persons are punishable for taking away things made use of for the benefit of highways.

Penalty for damaging banks, causeways, posts, blocks, &c. &c.

† *Stat.* 164. It is recited by the abovementioned statute of 13. Geo. 3. c. 78. s. 53. "That whereas in some places it hath been and may be found necessary to secure horse causeways and foot causeways, by posts, blocks, or great stones, fixed in the ground, or by banks of earth cast up, or otherwise, from being broken up and spoiled with waggons, wains, carts, or carriages; and as several evil-disposed persons do or may wilfully or wantonly pull up, cut down, and remove or damage the said posts, blocks, and great stones, so fixed, or to be fixed, as aforesaid, and drive carriages upon such banks and causeways, or against the sides thereof, and also dig or cast down the said banks, which are the securities and defence of the said causeways, whereby the causeways or banks are often ruined and destroyed; and such evil-disposed persons do or may break, damage, or throw down the stones, bricks, or wood, fixed upon the parapets or battlements of bridges, and do or may pull down, destroy, obliterate, or deface, any mile stone or post, graduated or direction post or stone, erected or to be erected upon any highway:" it is enacted, "That every person

“ person guilty of any such offence, shall, upon complaint
 “ to any justice where the same shall be proved to be done,
 “ by the oath of one witness, or upon view of the justice
 “ himself, forfeit not exceeding five pounds, nor less than
 “ ten shillings; and in default of payment, shall be com-
 “ mitted to the house of correction of such limit, to be
 “ whipped, and kept to hard labour not exceeding one ca-
 “ lender month, nor less than seven days (6).”

(6) The same provisions are made in respect to turnpike roads by 13. Geo. 3. c. 84.

As to the fifth particular, *viz.* How far persons may be punished for drawing a carriage with more than five horses in length.

† *Sec. 165.* It is enacted by 13. Geo. 3. c. 78. s. 56. “ That no waggon, having the sole or bottom of the fel-
 “ lies of the wheels of the breadth of nine inches, shall go
 “ or be drawn with more than eight horses; and that no
 “ cart, having the sole or bottom of the fellies of the breadth
 “ of nine inches, shall be drawn with more than five horses;
 “ and that no waggon, having the sole or bottom of the
 “ fellies of the breadth of six inches, and rolling on each
 “ side a surface of nine inches, shall go or be drawn with
 “ more than seven horses; and that no such waggon rolling
 “ a surface of six inches only, shall go or be drawn with
 “ more than six horses; and that no cart, having the sole
 “ or bottom of the fellies of the wheels of the breadth of
 “ six inches, shall go or be drawn with more than four
 “ horses; and that no waggon having the sole or bottom
 “ of the fellies of less breadth than six inches, shall go or
 “ be drawn with more than five horses; and that no cart
 “ having the sole or bottom of the fellies of less breadth
 “ than six inches, shall go or be drawn with more than
 “ three horses upon highways, not being turnpike roads;
 “ under pain that the owner of such waggon or cart respec-
 “ tively shall forfeit five pounds, and the driver, not being
 “ the owner, ten shillings, for every horse or beast which
 “ shall be so drawing above the number hereby so respec-
 “ tively limited, to the sole use and benefit of the informer:
 “ but carriages moving upon wheels or rollers of the
 “ breadth of sixteen inches on each side thereof, with flat
 “ surfaces, are hereby allowed to be drawn with any num-
 “ ber of horses, or other cattle.” (a)

Limitations of the number of horses for carriages with different wheels.

4. Burr. 2258. Stevens v. Duffey.

(a) Vide TURNPIKE in the payment

ROADS at the end of this chapter, how these carriages are favoured in the payment of tolls. Prosecutions for such additional horses how to be carried on.

† *Sec. 166.* But by 13. Geo. 3. c. 78. s. 57. it is provided, “ That no prosecution shall be commenced before
 “ a justice by information, for any forfeiture incurred by
 “ the owner or driver of any carriage, having a greater num-
 “ ber

"be of horses therein than are allowed by this act, unless within three days after the offence committed; and that no action shall be commenced for any such offence, unless within one calendar month; and that neither such information or action, unless notice shall be given by the informer to the driver of every such carriage, on the day upon which the offence shall be committed, of an intention to complain of such offence; and if it shall appear to the justice, that the offender lives so remote as to make it inconvenient to summon him to appear, the justice may leave the informer to his remedy by action at law."

Justices at sessions may licence an additional number of horses.

† *Stat.* 167. And by 13. Geo. 3. c. 78. s. 58. it is further provided, "That the general quarter sessions to be held in the week after *Michaelmas*, may licence an increase of horses in carriages up any steep hill, or on any road not turnpike, over and above the number herein before limited, if upon enquiry into the state and condition of such roads, they shall find any additional number of horses necessary; and, from time to time, at any *Michaelmas* quarter sessions, to revoke, alter, or vary the same, as they shall think fit."

Justices may stop proceedings for forfeitures in respect of additional horses.

† *Stat.* 168. And by 13. Geo. 3. c. 78. s. 59. it is further provided, "That if it shall appear upon the oaths of credible witnesses, to the satisfaction of any justice, or of any court of justice authorised to enforce the execution of this act, that any carriage could not, by reason of deep snow or ice, be drawn by the number of horses or beasts allowed; such justice, or court respectively, are hereby required to stop all proceedings for the recovery of any penalty incurred by drawing with a greater number than are hereby allowed."

Vide *Stevens and Dutney*, 4 Burr. 2200.

Carriages excepted out of this act.

† *Stat.* 169. But by 13. Geo. 3. c. 78. s. 59. it is provided, "That the regulations concerning the number of horses, and wheels of carriages, shall not be deemed to be construed to extend to carriages employed only in carrying any one stone, block of marble, cable rope, or piece of metal, or piece of timber, or to such ammunition or artillery as shall be for his majesty's service."

Two oxen equal to one horse.

† *Stat.* 170. And by 13. Geo. 3. c. 78. s. 59. it is enacted "That two oxen or horned cattle shall, for all the purposes of this act, be considered as one horse."

Regulations in London and Westminster.

† *Stat.* 171. By 6. Geo. 1. c. 6. "No person in *London* and *Westminster*, or within ten miles thereof, shall carry at any one load, in waggons or carts having their wheel

"the

“ shod with iron, more than twelve sacks of meal of five bushels each, nor more than twelve quarters of malt, nor more than 700½ of bricks, nor more than one chaldron of coals, on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, in such manner and to such uses, as by 5. Geo. c. 12. (now repealed.)”

† *Señt.* 172. And by 18. Geo. 2. c. 33. “ The wheels of every cart, car, or dray, within the bills of mortality, shall be six inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water side, on pain of 40s. by warrant of one justice, by distress; and for want of distress on non-payment in six days after demand, to be committed till paid: but this not to extend to any country cart or waggon that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places.”

† *Señt.* 173. “ Also any person, within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.”

As to the sixth particular, *viz.* How far drivers of carriages are punishable for misbehaviour.

† *Señt.* 174. By 13. Geo. 3. c. 78. f. 61. it is further re- Drivers of car-
cited, “ That whereas many bad accidents happen, and great riages punish-
mischiefs are frequently done upon the streets and highways, able for mis-
by the negligence or wilful misbehaviour of persons driv- behaviour or
ing carriages thereon,” it is therefore further enacted, “ That negligence, in
order to pre-
“ if the driver of any cart, car, dray, or waggon, shall ride vent acci-
“ upon any such carriage in any street or highway, not hav- dents.
“ ing some other person on foot, or on horseback, to guide
“ the same, (such carriages as are conducted by some per-
“ son holding the reins of the horse or horses drawing the
“ same excepted); or if the driver of any carriage whatso-
“ ever on any part of any street or highway shall, by neg-
“ ligence, or wilful misbehaviour, cause any hurt or da-
“ mage to any person or carriage passing or being upon
“ such street or highway, or shall quit the highway, and go
“ on the other side of the hedge or fence inclosing the same,
“ or wilfully be at such distance from such carriage whilst
“ it shall be passing upon such highway, that he cannot
“ have the direction and government of the horses or cattle
“ drawing the same; or shall, by negligence or wilful mis-
“ beha-

“behaviour, prevent, hinder, or interrupt the free passage of any other carriage, or of his majesty's subjects, on the said highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage; or if any person shall drive, or act as the driver, of any such coach, post-chaise, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name as before required, painted thereon, or shall refuse to discover the true christian and surname of the owner of such respective carriages; being convicted by his own confession, the view of a justice, or the oath of one witness, before any justice of the limit, shall forfeit not exceeding ten shillings, in case such driver shall not be the owner of such carriage; and in case the offender be owner, then not exceeding twenty shillings: and in either case shall, in default of payment, be committed to the house of correction, not exceeding one month, unless the same shall be sooner paid.”

+ Sect. 175. And by 13. Geo. 3. c. 78. s. 61. “Every such driver may, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be immediately conveyed to a peace officer, in order to be conveyed before some justice.”

+ Sect. 176. And by 13. Geo. 3. c. 78. s. 61. “If any such driver shall refuse to discover his name, the justice before whom he shall be taken, or to whom any such complaint shall be made, may commit him to the house of correction not exceeding three months, or proceed against him for the penalty aforesaid, by a description of his person and the offence, and expressing in such proceedings that he refused to discover his name.”

Drivers of carriages misbehaving.

+ Sect. 177. By 1. Geo. 1. st. 2. c. 57. “If any person driving any cart, dray, or waggon, in the streets of London, shall ride upon the same, not having some other person on foot to guide the same, he shall, on conviction before the alderman of the ward, or a justice of the peace, on oath of one witness, forfeit 10s. by distress and sale; half to the informer and half to the poor; and in default of payment, to be sent to the house of correction for three days.”

+ Sect. 178. And by the 24. Geo. 2. c. 43. “If any carter, drayman, carman, waggoner, or other driver, shall ride upon the same in London, or within ten miles thereof,

“no:

“not having some other person on foot to guide the same, he shall, on the like conviction, forfeit ten shillings in case such driver shall not be the owner of such carriage; and in case he be the owner, then any sum not exceeding twenty shillings; to be recovered, levied, and applied, as by the aforesaid act of the 1. Geo. 6. c. 57. And any person, though not a peace officer, may stop and apprehend such offender, and carry him as soon as conveniently may be before a justice; and if any person shall resist, abuse, or prevent any person endeavouring to apprehend such offender, or when he is apprehended shall rescue, or endeavour to rescue him, he shall forfeit twenty shillings in like manner.”

† *Stat.* 179. By 30. Geo. 2. c. 22. s. 7 & 12. “If the driver of any carriage within *London or Westminster*, or in any public street or common highway within the bills, shall, by negligence or wilful misbehaviour, interrupt the free passage of his majesty’s subjects; he shall on conviction by confession or oath of one witness, before one justice, forfeit any sum not exceeding twenty shillings, or be committed to the house of correction, or some other prison of the place where the offence shall have been committed, or the offender shall have been apprehended, to be kept to hard labour for any time not exceeding one calendar month: the said forfeiture to be levied by distress by warrant of such justice; and to be half to the prosecutor, and half to the overseers for the use of the poor of the parish or place where the offence shall be committed, or the offender shall be apprehended; and if there be no overseers, then to some other officer for the use of the poor as aforesaid.”

If any driver of a carriage in *London or Westminster* shall, avoidably, make a stoppage in the street, he shall forfeit twenty shillings.

† *Stat.* 180. And by 30. Geo. 2. c. 22. s. 13. “Any person who shall see any offence committed against this act, may by authority of this act, and without any other warrant, apprehend the offender, and shall with all convenient speed convey or deliver him to a constable or other peace officer of the place where the offence shall be committed, or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt with according to law.”

And any person on view may apprehend the offender.

† *Stat.* 181. And by 30 Geo. 2. c. 22. s. 11. “If he shall refuse to discover his name and place of abode to the justice before whom he shall be brought, he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare his

The offender shall discover his name and abode, or be committed.

" name and place of abode to the said justice, or to some other justice of such place."

Inhabitants
may be wit-
nesses.

† *Stat.* 182. By 30. Geo. 2. c. 22. f. 14. " Any person shall be admitted to be an evidence, notwithstanding his being an inhabitant of the place where the offence shall be committed.

† *Stat.* 183. But by 30. Geo. 2. c. 22. f. 15. it is provided, " That persons punished by this act shall not be punished by any former law."

The owner's
name, &c. to
be painted on
all carriages.

† *Stat.* 184. And by 13. Geo. 3. c. 78. f. 60. for the better discovery of offenders, it is enacted, " That the owner of every waggon, wain, cart, coach, post-chaise, or other carriage let to hire, shall cause to be painted, upon some conspicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all such coaches, post-chaises, or other carriages, before the same shall be used upon any public highway, his christian and surname, and the place of his abode, in large legible letters, and continue the same thereupon so long as such waggon, cart, coach, post-chaise, or other carriage, shall be used upon any such highway; and the owner of every common stage waggon or cart, employed in travelling stages from town to town, shall, over and above his or her christian and surname, paint, or cause to be painted, on the part, and in the manner aforesaid, the following words, " COM-
MON STAGE WAGGON, OR CART, as the case may be, upon pain of forfeiting a sum not exceeding five pounds, nor less than twenty shillings."

As to THE EIGHTH GENERAL HEAD of this Chapter, viz. In what manner those who are charged with any offence relating to the highway are to be proceeded against.

The forms of
proceeding.

† *Stat.* 185. It is enacted by the abovementioned statute of 13 Geo. 3. c. 78. f. 70. " That the forms of proceedings in the schedule shall be used, upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigences of the case; and that no objection shall be made, or advantage taken, for want of form in any such proceedings."

Printed ab-
stracts to be
given to the
surveyors.

† *Stat.* 186. And by 13. Geo. 3. c. 78. f. 71. it is further enacted, " That the justices shall, at every special sessions to be held in the week next after the *Michaelmas* general quarter sessions, procure and deliver a printed abstract of the most material parts of this act to every surveyor to be then appointed, as the charge hereby directed to be given, who shall severally pay sixpence for the same."

† *Stat.*

† *Sec. 187.* And by 13. Geo. 3. c. 78. f. 73. it is further enacted, "That all penalties and forfeitures, and all costs and charges (the manner of levying and recovering of which is not hereby otherwise particularly directed), shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of some justice for the limit where such offence shall happen, or such order for payment of such costs or charges shall be made, rendering the overplus to the party after deducting the charges of making the same; which warrant such justice is hereby empowered to grant, upon conviction by confession, or the oath of one witness, or upon order made as aforesaid; and when so levied, shall be paid, the one half to the informer, and the other half to the surveyor where such offence shall happen; to be applied towards the repairs, unless otherwise directed by this act; but in case the surveyor shall be the informer, then the whole shall be employed towards the repair of such highway: and in case such distress cannot be found, and such penalties or costs and charges shall not be forthwith paid, such justice is hereby authorized, by warrant under his hand or seal, to commit such offender to the common gaol or house of correction of the limit where the offence shall be committed, or such order as aforesaid shall be made, for any time not exceeding three months, unless the said penalty, costs, and charges, shall be sooner paid."

Forfeitures, costs, and charges, may be levied by distress, &c.

In what manner to be applied.

† *Sec. 188.* And by 13. Geo. 3. c. 78. f. 73. "If such offender shall live out of the jurisdiction of the justice, any justice of the limit wherein such person shall inhabit, upon request to him for that purpose made, and upon a true copy of the conviction, and order for the payment of such costs and charges, produced and proved by a credible witness upon oath, may, by warrant under his hand and seal, cause the penalty mentioned in such conviction, and the costs and charges mentioned in such order, or so much thereof as shall not have been paid, to be levied, by distress and sale of the goods and chattels of such offender; and if no sufficient distress can be had, commit such offender to the common gaol, or house of correction of such limit, for the time, and in manner aforesaid."

How to proceed when the offender lives within another jurisdiction.

† *Sec. 189.* But by 13. Geo. 3. c. 78 f. 74. it is provided, "That no warrant of distress, unless otherwise directed by this act, shall be issued for levying any penalty, costs, or charges, until six days after the offender shall have been convicted, and an order made and served upon him or her for payment thereof."

Warrant of distress when to be issued.

Convictions
how to be
made.
Strange 182.
10. Mod. 150.

† *Seff.* 190. And by 13. Geo. 3. c. 78. s. 77. it is further enacted, "That no conviction shall be made unless upon
" confession, or the oath of one witness, or the view of a
" justice in the cases before mentioned; and that any inha-
" bitant shall be deemed a competent witness."

(7) Vide Ke-
lynge 34.
Str. 900. 944.
B. R. H. 99.
Seff. Cal. 179.
415.
Strange 1209.
Barn. K. B.
111. 445.
1. Black. 467.

† *Seff.* 191. And by 13. Geo. 3. c. 78. s. 24. it is further enacted, "That every justice of assize, justices of the coun-
" ties palatine of *Chester*, *Lancaster*, and *Durham*, and of the
" great sessions in *Wales*, shall have authority by this sta-
" tute, upon his or their own view, and every justice of the
" peace, either upon his own view (7), or upon informa-
" tion upon oath to him given by any surveyor of the high-
" ways, to make presentment, at their respective assizes or
" great sessions, or in the open general quarter sessions, of
" such respective limit, of any highway, causeway, or bridge,
" not well and sufficiently repaired and amended, or of any
" other default or offence committed and done contrary to
" the provision and intent of this statute; and that all defects
" in the repair thereof shall be presented in such jurisdiction
" where the same do lie, and not elsewhere."

Rex v. Pen-
derry, 2. T.
Rep. 513.

† *Seff.* 192. It hath been determined on this clause of the statute, that a presentment against a smaller district than a pa-
rish, must state expressly how they are liable to repair the roads.

No prosecu-
tion to be re-
moved untill
after judg-
ment.

† *Seff.* 193. And by 13. Geo. 3. c. 78. s. 24. it is further enacted, "That no such presentment, nor any indictment
" for any such default or offence, shall be removed by *certi-*
" *orari*, or otherwise, out of such jurisdiction, till such in-
" dictment or presentment be traversed, and judgment
" thereupon given, except where the duty or obligation of
" repairing the said highways, causeways, or bridges, may
" come in question."

Rex v. Inha-
bitants of
Bodenham,
Cowper 78.

† *Seff.* 194. Upon this clause it is resolved, that a *certi-*
orari pro rege lies before traverse of the indictment and judg-
ment thereupon; for the king does not traverse, and there-
fore the words "till such indictment be traversed," shew very
plainly that this clause was not intended to take away the
writ of *certiorari* at the instance of the crown; and although
a private person is the real prosecutor, yet in these cases that
circumstance makes no distinction; for it was calculated
merely to prevent delay on the part of defendants.

1. Term Rep.
260.

† *Seff.* 195. It hath also been determined upon this clause, that it is no objection to a *certiorari* to remove a pre-
sentment of a road made by a justice of the peace under it,
that it is prosecuted by another than the justice presenting
it; if it be by his consent.

† *Seff.*

† *Sect.* 196. And by 13. Geo. 3. c. 78. f. 24. "Every Justices of assize and of the peace, &c. to present highways, &c. out of repair.
 "such presentment made by any such justice of assize, counties palatine, great sessions, or of the peace, upon his own view, or upon such information having been given to such justice of the peace, upon the oath of such surveyor of the highways, as aforesaid, shall be as good, and of the same force, strength, and effect, in the law, as if the same had been presented and found by the oaths of twelve men."

† *Sect.* 197. And by 13. Geo. 3. c. 78. f. 24. it is further enacted, "That for every such default or offence so presented as aforesaid, the justices of assize, counties palatine, and great sessions, at their respective courts, and the justices of the peace at their general quarter sessions, shall have authority to assess such fines as to them shall be thought meet; saving to every person and persons that shall be affected by any such presentment, his, her, or their lawful traverse to the same presentment, as well with respect to the fact of non-repair as to the duty or obligation of repairing the said highways, as they might have had upon any indictment of the same presented and found by a grand jury."

† *Sect.* 198. It is now settled, that the justices are compellable by *mandamus* to receive a general traverse to a presentment of a highway being out of repair, made by a justice of peace upon view. Burr. 1532.
 4. Mod. 38.
 Show. 270.
 1. Black. 468.

† *Sect.* 199. And by 13. Geo. 3. c. 78. f. 24. "The justices of the peace, at their general quarter sessions, or the major part of them, may, if they see just cause, direct the prosecutions upon such presentments as shall be made at the quarter sessions as aforesaid, to be carried on at the general expence of such limit, and to be paid out of the general rates within the same." Justices may order prosecutions.

Sect. 200. It hath been holden in the exposition of this clause, that the party against whom such a presentment shall be made, cannot take any traverse to the want of repair of such highway; but, it is agreed, that he may plead that some other person ought to repair the same, and traverse his own obligation to do it. Neither can I see upon what reason the former opinion is grounded, that he cannot traverse the want of repair of such highway; for since the statute expressly saves to every person who shall be touched by any such presentment his lawful traverse to the same, as he might have to an indictment of trespass or forcible entry; and since it seems clear, that every defendant to any such indictment may traverse the whole matter alledged against him, as hath been

Keilw. 34.
 Crom. 131.
 Dalt. c. 26.
 1. Black. 467.

See Carth.
212, 213.
Sup.c.64.f.18.

5. Hen. 7.
Dyer 13.

shewn more at large Chap. 64. Sect. 58. why may he not as well have the same benefit in the present case? And though the record of a justice of peace acting by force of any statute as a judge, be not traversable; yet it seems hard by such a general rule, to make any record not traversable, which by the express words of the statute, which authorises the making of it, is allowed to be traversable: it is true indeed, that a presentment in a court-leet is not traversable, unless it touch the party's freehold; but I do not see why such a presentment in pursuance of this statute should have the like privilege, since the statute hath no mention of such presentments in courts-leet, but gives the like traverse as is allowed by law upon any indictment of trespass, &c.

Assessments
may be levied
by distress.

† Sect. 201. And by 13. Geo. 3. c. 78. f. 68. it is also enacted, "That if any person shall refuse or neglect to pay
" any assessment within ten days after demand thereof made,
" the same shall be levied by any person authorized by war-
" rant under the hand and seal of one justice, having juris-
" diction therein, by distress and sale of the goods and chat-
" tels of the person so refusing or neglecting, rendering the
" overplus, the necessary charges of making such distress
" and sale being first deducted; and in default of such dis-
" tress, any such justice may commit the person to the com-
" mon gaol, until he shall have paid the sum so assessed,
" and the costs and charges occasioned by such neglect or
" refusal."

† Sect. 202. And by 13. Geo. 3. c. 78. f. 69. "The sur-
" veyor shall be deemed, in all cases, a competent witness,
" notwithstanding his salary may arise in part from the for-
" feitures and penalties hereby inflicted."

How the pro-
secutor may
proceed for a
forfeiture
above 40s.

† Sect. 203. And by 13. Geo. 3. c. 78. f. 75. it is also enacted, "That every prosecutor or informer may, at his
" election, sue for, and recover any penalty of forty shillings
" or upwards (the manner of recovery thereof not being
" particularly directed by this act), either in the manner
" herein before directed, or by action at law, in any of his
" majesty's courts of record, by action or debt, in which it
" shall be sufficient to declare that the defendant is indebted
" as described in the act, and the plaintiff, if he recovers,
" shall have double costs."

Limitation of
actions and
notice.

† Sect. 204. But by 13. Geo. 3. c. 78. f. 76. it is provided,
"That there shall not be more than one recovery for the
" same offence; and that ten days notice in writing be given
" to the party offending previous to the commencement of
" such action; and that the same be brought and com-
" menced

"menced within one calendar month after the offence for which such action is brought shall have been committed."

† *Seet.* 205. And by 13. Geo. 3. c. 78. f. 79. it is further enacted, "That where any distress is levied, the distress itself shall not be deemed unlawful, nor the party making the same a trespasser, on account of any default or want of form in any proceedings relating thereto; nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by the party distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case." Special damage, but distress not unlawful for want of form.

† *Seet.* 206. And by 13. Geo. 3. c. 78. f. 65. it is further enacted, "That the Court before whom any indictment or presentment shall be tried, may award *costs* to the prosecutor, to be paid by the person so indicted or presented, if it shall appear that the defence was frivolous; or to award costs to the person indicted or presented, to be paid by the prosecutor, if it shall appear that such prosecution was vexatious."

† *Seet.* 207. It hath been determined, that if a person indicted for not repairing a road *ratione tenuræ* be convicted, the Court will not inflict a small fine on a certificate of the road being repaired, until the prosecutor's costs are paid. Rex v. Wingfield, 1. Bl. Rep. 602.

† *Seet.* 208. It hath also been determined, that if the defendants in an indictment for not repairing a road, and which is removed by *certiorari*, be acquitted for want of prosecution, the court of king's bench has no power to award costs to the defendant on the ground of its being a vexatious prosecution on the above clause, but the application must be made to the judge *at nisi prius*. Rex v. Chaderton, 5. T. Rep. 272.

† *Seet.* 209. And by 13. Geo. 3. c. 78. f. 66. it is further enacted, "That if the inhabitants shall agree, at a vestry or public meeting, to prosecute any person by indictment, or to defend any indictment or presentment preferred against any parish, township, or place, the surveyor may charge in his account the reasonable expences incurred in carrying on or defending such respective prosecutions, after the same shall have been agreed to by such inhabitants at a vestry or public meeting, or allowed by a justice within the limit where such highway shall be; which expences shall be paid out of the fines, forfeitures, compositions, payments, and assessments."

† *Stat.* 210. And by 13. Geo. 3. c. 78. s. 67. it is further enacted, "That in all cases where a vestry or public meeting of the inhabitants is directed by this act, there shall be public notice given of the day, hour, and place, of holding the said meeting, at the church or chapel of such parish, township, or place, on the *Sunday* next preceding such meeting, and also notice thereof in writing, specifying the purpose of such meeting, fixed at the same time upon the door of such church or chapel, and the same shall not be held till three days at least after such notice given; and if there be no church or chapel, the like notice of such meeting shall be given in writing, and put up at the most public place therein, three days at least before such meeting."

Forfeiture for opposing the execution of the act.

(8) Vide 1 Black. 603.

† *Stat.* 211. And by 13. Geo. 3. c. 78. s. 72. it is further enacted, "That in case any person shall resist or make forcible opposition against any employed in the due execution of this act, or make any rescue of the cattle or other goods distrained; or if any constable, headborough, or tithingman, shall refuse or neglect to execute or obey any warrant or precept granted by any justice, pursuant to the directions of this act; being convicted by a justice, shall forfeit not exceeding ten pounds, nor less than forty shillings; to be paid to the surveyor (8) where the offence was committed, to be laid out in the repair of the highways: and in case he do not forthwith pay, or secure to be paid, the said forfeiture after such conviction, such justice may commit such person to the common gaol or house of correction of the limit, to remain not exceeding three months, unless the said forfeiture shall be sooner paid."

2. Str. 1209.
2. Str. 944.
See B.2.C. 27.
S. 37. 46, 47.
Cowper 78.

† *Stat.* 212. By 13. Geo. 3. c. 78. s. 24. it is enacted, "That all defects of repairs of causeys, pavements, highways or bridges, shall be presented in the county only where such causeys, &c. lie, and not elsewhere; and that no such presentment or indictment shall be removed by *certiorari*, or otherwise, out of the said county, till such indictment or presentment be traversed, and judgment thereupon given."

† *Stat.* 213. And by 13. Geo. 3. c. 78. s. 81. it is further enacted, "That all matters concerning highways, causeys, pavements, and bridges, mentioned in the said act, shall be determined in the county where the same do lie, and not elsewhere; and that no presentment, indictment, or order, made by virtue of the said act, shall be removed by *certiorari* out of the said county into any other court."

† *Stat.*

† *Seft.* 214. Yet it hath been resolved, that if the *quarter sessions*, under pretence of the jurisdiction given them by these statutes, take upon them to do a thing manifestly exceeding their authority, as to make an order on surveyors of the highways to make up their accounts before a *special sessions*, these proceedings may be removed by *certiorari* into the king's bench, and there quashed; for the *quarter sessions* have no manner of power given them to intermeddle originally with such accounts, but only by way of appeal (9).

Queen v. Bramby, Mic. 10. Ann. Strange 849. 900. 944. 1209. Bar. K. B. 111. 236. 445. Caf. Temp. King, &c. 99. Sess. Cafes, 163. 329.

(9) See ante, *sect.* 44. &c.

† *Seft.* 215. And if the prosecutor has enlarged the rule for shewing cause why the order should not be quashed, he cannot afterwards object to the issuing of the *certiorari*.

2. Burr. 745.

† *Seft.* 216. And by 13. Geo. 3. c. 78. f. 78. it is further enacted, "That any justice may administer an oath to any person for the better discovery and execution of the several matters or things hereinbefore authorized or directed to be examined, enquired into, or performed by such justice."

Oaths.

† *Seft.* 217. And by 13. Geo. 3. c. 78. f. 62. it is further enacted, "That any two justices are hereby impowered to hold any special sessions, besides that which is hereinbefore directed, for executing the purposes of this act; and to adjourn the same from time to time, as they shall think fit, causing notice to be given of the time and place of holding such special sessions, and of the adjournments thereof, to the several justices acting and residing within such limits, by the high constable, or other proper officer within the same."

Justices may hold special sessions on notice.

As to THE NINTH GENERAL HEAD of this chapter, *viz.* In what manner persons proceeded against for any of the above-mentioned offences may defend themselves.

† *Seft.* 218. It is enacted by the said statute, 13. Geo. 3. c. 78. par. 81. "That any person aggrieved by any person in the execution of this act, and for which no particular method of relief hath been appointed, may appeal to the general quarter-sessions, such appellant giving notice in writing of such appeal, and of the matter thereof, to the person against whom such complaint shall be made, within six days after the cause of such complaint arose, and within four days after such notice, entering into recognizance before some justice within such limit, with one surety, conditioned to try such appeal at, and abide the

Appeal may be made to the quarter-sessions.

"the

"the order of, and pay such costs as shall be awarded by the quarter-session."

† *Stat.* 219. And by 13. Geo. 3. c. 78. f. 81. "Every person having received notice of such appeal, shall return all proceedings before them to the general quarter-sessions, on pain of five pounds."

† *Stat.* 220. And by 13. Geo. 3. c. 78. f. 81. "The said session, upon due proof of such notice and recognizance, shall hear and finally determine such appeal in a summary way, and award costs to the parties appealing or appealed against, to be levied as before directed."

Proceedings
not to be
quashed for
want of form,
nor to be re-
moved by *certiorari*.

† *Stat.* 221. And by 13. Geo. 3. c. 78. f. 81. "The determination of such quarter-session shall be final and conclusive, and no proceedings shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ, or process whatsoever (except as hereinbefore mentioned), into any court of record at *Westminster*, provided that no such appeal shall be made against any conviction for any penalty, unless the person convicted shall, at the time of such conviction if present, if not within six days after, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties to pay such penalty, in case such conviction shall be affirmed; and upon his giving such security, the further proceeding for such penalty shall be suspended until such appeal shall be heard and determined."

Limitation of
actions, and
mode of
pleading.

† *Stat.* 222. And by 13. Geo. 3. c. 78. f. 82. it is further enacted, "That every action or suit shall be commenced or prosecuted within three calendar months after the fact committed, and not afterwards; and shall be brought within the county where the fact was committed, and the

General issue.

"defendant may plead the *general issue*, and give this act, and the special matter, in evidence. And if brought after the time limited, or laid in any other place than as aforementioned, the jury shall find for the defendant; or if the plaintiff shall become nonsuit, or discontinue after the defendant shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff, the defendant shall recover treble costs."

Treble costs.

Bazing v.
Skelton,
5. Term Rep.
16.

† *Stat.* 223. It hath been determined upon this clause of the statute, that gatekeepers sued on subsequent statutes, as for assault and imprisonment, under the post-horse duty act, 25. Geo. 3. c. 51. for not delivering the ticket required by

by that statute, need not be sued in the county where the fact was committed.

† *Sect. 224.* But by 13. Geo. 3. c. 78. s. 80. it is also provided, "That no plaintiff shall recover for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made before such action brought; and in case no such tender shall have been made, the defendant, by leave of the Court at any time before issue joined, may pay into court such sum of money as he shall see fit. But nothing in this act contained shall extend to the city of *Bristol*, or to the parish of *Whitechapel*, and *Saint John, Wapping*, nor to abridge the powers of the commissioners of sewers, &c."

Plaintiffs not to recover if tender of amends is made.

Sec. 225. Also it seems to be implied in the construction of these as well as of all other penal statutes, that no one ought to be convicted of any offence against them, without having notice of the accusation made against him, and an opportunity of defending himself. And therefore I shall take it for granted, that generally no one ought to be punished for any of the above mentioned offences, without being called upon to answer for himself, and having liberty to *traverse* the matters alledged against him: it is true, indeed, that it is generally holden, that no *traverse* can be taken against a *presentment* by a justice of peace of his own knowledge, as to the want of repair, yet this opinion seems justly questionable, for the reasons alledged in the seventy-second section of this chapter.

N. B. This observation was applied to the former statutes upon this subject.

Sect. 226. However, it is certain, that in all other cases, whoever is indicted or presented in any court, except a court-leet, for any offence relating to the highways, may *traverse* the whole matter alledged against him in such indictment or presentment.

Sec. 227. But it seemeth to be agreed, that he who is presented for such an offence in a court-leet, can only *traverse* it so far as it concerns his freehold, as by charging him with being bound to such repairs in respect of the tenure of his lands, &c. for which purpose it is certain that he may remove it by a *certiorari* into the king's bench, and there *traverse* it.

5. H. 7. 4.
Dyer 14.
Finch 386.
Rex v. Poul
fel, 1. Term
Rep.

Sect. 228. Also there is no doubt, but that after conviction, or upon a demurrer or confession, any one may take exceptions to any such indictment or presentment in any court for the want of legal form; but the Court in discretion will very rarely suffer a man to take such exceptions

Anderfon
234.
1. Keble 256.
291. 349.
2. Keble 715.
728.

ceptions before such conviction or confession, without a certificate and affidavit that the ways are in good repair.

THEREFORE, for the better understanding in what cases it may be safe to demur to, or confess an indictment or a presentment of this kind, I shall lay down the following rules concerning them.

(a) 2. R. Abr. 81. *Sect. 229. I.* That it is (a) safest in every such indictment to shew both the place *from* which, and also the place *to* which, the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been (b) disallowed; however it seems certain, that there is no necessity to shew (c) that a highway leads to a market town, because every highway leads from town to town. *Vide* 4. Burr. 2091. Lucas 383. where no objection of this kind is disallowed. 1. Brownl. 9. (c) Palmer 389. 2. Roll. 412. B. R. H. 316.

(d) 3. Keble 644. *Sect. 230. II.* That it is necessary (d) in every such indictment expressly to shew *in* what place the nuisance complained of was done, for which (e) cause an indictment for stopping a way *at D. leading from D. to* is not good; for it is impossible that a way leading from *D.* should be in *D.* and no other place is alledged.

Rex v. Gamlingay, 3. Term Rep. 316. *Sect. 231. III.* So also it hath been adjudged, that an indictment against the parish of *B.* for not repairing a road leading from *A.* to *B.* is exclusive of *B.* and therefore bad, and not aided by a subsequent allegation, "that a certain part of the same highway situate *in B.* is in decay, &c."

Stra. 181. Cowp. 111. *Sect. 232. IV.* So also in a presentment the highway must be alledged to lie in the parish, otherwise the parish is not bound to repair.

Stra. 44. 1. 11 Bl. Rep. 351. Sayer 119. *Sect. 233. V.* But in an indictment for a nuisance, it is not necessary to mention the *termini* of a highway. Also if there be two vills in a parish, it is not necessary in an indictment for a nuisance to shew in which vill the nuisance lies.

Cro. Jac. 324. Latch 183. *Sect. 234. VI.* That every such indictment ought also certainly to shew to what part of the highway the nuisance did extend, as by shewing how many foot in length, and how many foot in breadth it contained, or otherwise the defendant will neither know of the certainty of the charge against which he is to make his defence, neither will the Court be able from the record to judge of the greatness of the

the offence, in order to assess a fine answerable thereunto; and upon this ground it hath been adjudged, that an indictment for stopping a certain part of the king's way at *K.* is naught, for the uncertainty thereof. 2. R. Abi. 80. 81.

SecT. 235. VII. Also it hath been resolved, that the place wherein such a nuisance is alledged, is not sufficiently ascertained in such an indictment by shewing that it contained so many foot in length, and so many in breadth, by estimation. 2. R. Abr. 81.

† *SecT. 236.* VIII. An indictment for a nuisance in laying soil in a highway is not bad for want of the length and breadth of the nuisance being set out. Nor for a nuisance in digging two grips or ditches in a common footway. Nor for a nuisance that a certain highway and bridge are in a ruinous condition. Sayer 98. 167. 301.

SecT. 237. IX. That every such indictment must shew, that the way wherein a nuisance is alledged is a way common to all the king's people: for which cause it hath been resolved, that an indictment for a nuisance to a (a) horseway without adding that it is a highway, is naught. Salkeld 359. 6. Modern 255. Contra, Sayer 168, 169. (a) C. Eliz. 63.

SecT. 238. X. And upon the same ground it seemeth also, that an indictment for a nuisance to a common footway to the church of *D.* for (b) all the parishioners of *D.* is not good: yet it (c) seems, that if those last words, *v.z.* "for all parishioners of *D.*" had been omitted, such an indictment might be maintained. (b) See 2. R. Abr. 83. 1. Ventris 208. Popham 206. 2. Keble 728. (c) 1. Vent. 208. 3. Keble 28.

† *SecT. 239.* XI. That it is not necessary to say that it is a highway for this or that particular kind of carriage; because if it is stated to be "a common highway," it shall be intended a highway for all manner of things. B. R. H. 316.

† *Sect. 240.* XII. That in pleading a public highway, it is sufficient to say, "that before and at the said time when, &c. there was, and of right ought to have been, a certain common public highway, leading, &c. for all the liege subjects, &c. to go, return, pass, and repass, on foot and on horseback, and with their cattle and carriages at all times of the year, &c." without alledging that it had been a highway from time immemorial. Aspidal v. Brown, 3. Term Rep. 265.

Sect. 241. XIII. That it is not safe in an indictment against a common person for not repairing a highway, which he ought to have done in respect of the tenure of certain

(d) Noy 93. certain lands, barely to say that he was bound to repair it
 3. Kech 855. *ratione tenuræ terræ*, without adding (d) *suæ* (10).
 (10) If a man be charged to repair *ratione tenuræ*, he may throw it upon the parish by the general issue. Stra. 184. And it hath been held, upon consideration, that *ratione tenuræ* is sufficient without *suæ*. Strange 187.

Rex v. Great + Sect. 242. XIV. So also an indictment against a particular division of a parish, for not repairing a common highway, stating that the inhabitants thereof, from time whereof the memory of man is not to the contrary, *ought to repair and amend*, is not sufficient; for the parish at large being bound of common right to repair, it ought to shew by what right the charge was laid on the particular division.

(e) 3. Keb. 58. Sect. 243. XV. Also it is said, that in an indictment against a (e) bishop, &c. for not repairing a highway, in respect of certain lands, it ought to be shewn in what capacity he ought to repair it, because otherwise it cannot be known in what capacity the process is to be awarded against him.
 Vide Vent. 331. according. 2. Kech. 514.
 Raymendi 82.

11. Modern Sect. 244. XVI. That in every such indictment the fact alleged against the defendant must be expressed in such proper terms, that it may clearly appear to the Court to have been a nuisance; and for this cause it hath been resolved, that a presentment for diverting a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it be obstructed, and a new way made in another place.

2. Roll. Abr. Sect. 245. XVII. That an indictment against a man for stopping a highway in his own land, is good without laying the offence done *vi et armis*.
 79. 81.

2. Roll. Abr. Sect. 246. XVIII. Also it is said, that a presentment that a highway in such a place is decayed by the defaults of the inhabitants of such a town, is good without naming any person in certainty.
 79.

2. Roll. Abr. Sect. 247. XIX. But it hath been adjudged, that an indictment against particular persons must specially charge them every one; for which cause it hath been resolved, that an indictment against several for not repairing their streets, that they, *et eorum utroque*, did not repair them, is not good.
 81.

1. Sid. 140. Sect. 248. XX. That the defendants ought not to plead Carth 213. *quod non debent reparare*, without shewing who ought.
 11. Mod. 273.
 12. Mod. 13.

Sec. 249. XXI. That the defendants shall not be discharged by submitting to a fine, but a *distingas* shall go *in infinitum* till they repair. Salkeld 358. 6. Mod. 163.

+ *Sec. 250. XXII.* That a plea of justification in trespass, stating that a public highway led from another highway (leading from *A.* to *B.*), in, through, over, and along the *locus in quo*, to a certain other highway (leading from *C.* to *D.*), is well supported by evidence proving that the way in question led from the *terminus a quo*, viz. the way leading from *A.* to *B.* over the *locus in quo*, to a different way called *E.* and *along that way* into the way leading from *C.* to *D.* the *terminus ad quem*. Rouse v. Bar-
din, 1. H. Bl.
Rep. 351.

+ *Sec. 251. XXIII.* That in an action on the case for not repairing a private way, it is sufficient to alledge that the defendant, by reason of his possession of the said close called &c. is bound to repair the said way, &c. Rider v.
Smith, 3.
Term Rep.
766.

+ *Sec. 252. XXIV.* That if a parish be situate part in one county and the rest in another county, and a highway lying in one part be out of repair, an indictment against the inhabitants of that part of the parish only is bad; for the indictment must be against the whole parish. Rex v. Clif-
ton, 5. Term
Rep. 498.

CHAPTER THE SEVENTY-SIXTH,

CONTINUED.

OF TURNPIKE ROADS.

THE turnpike roads of England are placed under the management and direction of certain bodies of trustees, who are usually named and appointed by the respective acts of parliament which are occasionally passed for the purpose of making, repairing, and sustaining the particular roads therein specified. But the powers of these statutes being confined to separate and distinct objects, it was thought expedient to pass some general laws which should apply in common to all trustees and turnpike roads in general, throughout the kingdom. These laws I shall endeavour to comprize under the following particulars :

1. As to the appointment and authority of trustees.
2. As to the construction of weighing engines ; the weight allowed ; and tolls.
3. As to the regulation of carriages.
4. As to exemptions from toll.
5. As to statute-duty and repairs.
6. As to materials for repairs.
7. As to nuisances.
8. As to subscribers and mortgagees.
9. As to officers in general.
10. As to repairing altered roads.
11. How far the powers of the highway act may be adopted.
12. As to the modes of proceeding.

Trustees, how
to be qualified.

As to THE FIRST POINT, viz. the appointment and authority of trustees.

(g) By 21.
Geo. 3. c. 20.
this act is ex-
tended to all
acts of parlia-
ment which
have been
made since,
and which
shall hereafter
be made for
the amending
or repairing
any particular
turnpike roads
in England.

† *Sec. 1.* It is recited, by 13. Geo. 3. c. 84. f. 44. (a) that many mischiefs have arisen from mean persons acting in that capacity, in the execution of those acts of parliament as have incautiously omitted to direct that trustees shall be possessed of property to a certain value; it is therefore enacted, "That no trustee shall be qualified for that office, unless he shall, in his own or his wife's right, be in the actual possession or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of 40l. or possessed of or intitled to a personal estate worth 800l. or shall be born apparent to a landed estate of 80l. a-year; and unless (not being such heir apparent), he shall take and subscribe the oath in the act recited, before two or more of the trustees, appointed by such act, and if he shall presume to act as a trustee, without being thus qualified, he shall forfeit 50l. to any person who shall sue for the same, who shall recover, without any other proof or evidence that such person hath acted as a trustee, except such person shall prove that he is qualified in the manner above-mentioned."

No publican
can be a trust-
ee.

† *Sec. 2.* By 13. Geo. 3. c. 84. f. 46. it is further enacted, "That no person who shall keep any victualling-house, ale-house, or other house of public entertainment, or who shall sell any wine, cyder, beer, ale, spirituous, or other strong liquors, by retail, shall be capable of acting as a trustee, or of holding any place of trust or profit under the trustees, or of collecting the tolls. But no such person shall be precluded from farming such tolls, provided he employs a person to collect them, who shall not be under such incapacity."

What shall be
evidence of a
trustee.

† *Sec. 3.* And by 13. Geo. 3. c. 84. f. 64. "In all cases where any action shall be brought against any trustee evidence of acting as such, together with the act of parliament by which he or they were appointed, or the order, or a copy of the order for the appointment or election, &c. shall be sufficient proof of his being trustee."

Their meet-
ings regula-
ted.

† *Sec. 4.* And by 13. Geo. 3. c. 84. f. 49. amended and explained by 18. Geo. 3. c. 63. "In all cases where the trustees appointed by any act of parliament shall not meet on the day appointed for their first meeting by any such act; or on any day appointed by adjournment; or have not adjourned in the manner directed by any such act; or when the day appointed for the first meeting of the trustees has elapsed before the passing of any such act; any

“ any five or more of the trustees appointed to execute such act shall and may, in any or either of the cases aforesaid, cause notice under their hands to be affixed on all the turnpike gates, which shall be then erected on the roads for which they are trustees; or if no turnpike gate shall be then erected, shall cause the like notice to be affixed in some conspicuous place, in one of the market towns near the roads directed to be repaired, and also shall publish in some newspaper circulated in that part of the country, at least *twenty days* before the intended meeting, appointing the trustees to meet at the place where the last preceding meeting was appointed to be held, or at the place directed for the first meeting of such trustees, if no preceding meeting shall have been held; and the said trustees, when met in pursuance of such notice, shall and may carry such act or acts into execution, in the same and as full and ample a manner as if no such neglect or omission had happened, or such act had been passed previous to the time appointed for the first meeting, and such trustees had met accordingly.”

† *Stat. 5.* But by 13. Geo. 3. c. 84. s. 50. it is provided, “ That no meeting of such trustees shall be adjourned for any longer time than three calendar months, from the day on which such adjournment shall be made; and that no business shall be done at any meeting before ten in the forenoon, and no adjournment shall be made to any hour later than two in the afternoon, on which such meeting shall be appointed to be held, and that every act agreed upon at such meeting shall be signed, at the meeting, by a competent number of trustees, or otherwise such meeting, adjournment, and act respectively, shall be void.”

In what manner the meetings shall be adjourned.

† *Stat. 6.* 13. Geo. 3. c. 84. s. 51. “ Where the trustees shall not meet on the day appointed for their first meeting, or on any day appointed by adjournment, or shall not adjourn, or when the day appointed for the first meeting hath elapsed before the passing of the act; any five or more of them may cause notice under their hands to be affixed on all the turnpike gates on the said road, or if none shall be then erected, they may cause the like notice to be affixed in some conspicuous place in one of the market towns near the road, and also to be published in some newspaper circulated in that part of the country, at least *twenty days* before, appointing the trustees to meet at the place where the last preceding meeting was appointed to have been held, or at the place directed for the first meeting, if no preceding meeting hath been held.”

Proceedings are valid, although the trustees may not have been regularly appointed.

† *Sec. 7.* By 25. Geo. 3. c. 82. f. 7. "And whereas some persons may have acted as trustees in the execution of certain turnpike acts without having been regularly appointed, and doubts may arise whether the proceedings of the trustees had at any meetings where such persons have acted are strictly legal, for obviating whereof it is enacted, that all proceedings of trustees for any turnpike road, at meetings where any such persons have acted, shall be as good, valid, and effectual in the law, as if such person had been duly appointed; and that no such person shall be liable to be prosecuted for having so acted, provided that at the time he so acted as a trustee, he had an estate sufficient to qualify him, and had also taken the oath required by persons acting as trustees."

If they exceed their power in erecting gates, the justices may order the gates to be removed.

† *Sec. 8.* And by 13. Geo. 3. c. 84. f. 51. it is further enacted, "That if the trustees abuse or exceed their power, by erecting or continuing any gate or turnpike, where they have not any power by virtue of any act, the justices of the limit where any such gate or turnpike shall be erected or continued, in their general quarter-sessions assembled, upon complaint of such abuse or excess of power in such trustees, shall in a summary way hear and determine the same, and thereupon order the sheriff of the county, who is hereby authorized and required to execute such order, to remove the same."

May administer oaths. Vide highway act. sect. 78. Ante, p. 217.

† *Sec. 9.* And by 13. Geo. 3. c. 84. f. 84. "Where any oath is required to be taken by this act, the justices of any limit, or the trustees of any turnpike road, as the case may be, according to their several jurisdictions, are empowered to administer the same."

Trustees may farm out the tolls

† *Sec. 10.* By 13. Geo. 3. c. 84. f. 31. it is recited, "that there are no powers given to the trustees to let or farm out the tolls arising upon turnpike roads, and in many cases where the particular acts have given such power, they are not executed in the most beneficial manner for such roads;" and therefore enacted, "That any seven trustees, at a public meeting, may let or farm the tolls of the several gates erected upon their respective turnpike roads, viz. The trustees shall cause notice to be given of the time and place for letting the same at least one month before the day appointed for that purpose, by fixing the same upon every toll-gate belonging to such turnpike road, and also upon the market cross of the market town nearest to the place where the said tolls are to be let, and also in some public newspaper circulated in that part of the country, and specifying in every such notice the sum
"which

“ which the said tolls produced in the preceding year, clear of the salary for collecting the same; and that they will let such tolls by auction to the best bidder, on his producing sufficient securities for payment of the money monthly, or quarterly, as the trustees shall require; and that they will be put up at the sum which they were let for or produced in the preceding year, clear of the salary of the collector.”

under particular directions and restrictions.

† *Stat. 11.* And by 13. Geo. 3. c. 84. s. 31. “ The trustees shall provide a glass, with so much sand in it as will run from one end of it to the other in one minute; which glass, at the time of letting the said tolls, shall be set upon a table, and immediately after every bidding the glass shall be turned, and as soon as the sand is run out, it shall be turned again, and so for three times, unless some other bidding intervenes: and if no other person shall bid until the sand shall have run through the glass for three times, the last bidder shall be the farmer or renter of the said tolls, and shall forthwith enter into a proper agreement for the taking thereof, and paying the money at the times specified in such notice, or as shall be agreed upon between him and the said trustees. And in case no bidder shall offer, the trustees may appoint a collector of such tolls, or fix some future day for the letting thereof, as they shall judge most proper, upon giving such notices as aforesaid, and shall and may in that case put them up at such sum as they shall think fit.”

The method by which they shall farm out the tolls.

† *Stat. 12.* And by 13. Geo. 3. c. 84. s. 71. “ If the farmer or renter of such tolls shall take a greater or less toll than is authorized and directed by this or the particular turnpike act, he shall, for every offence, forfeit five pounds—and every other gatekeeper shall forfeit forty shillings.”

Penalty for taking more or less toll.

† *Stat. 13.* And by 13. Geo. 3. c. 84. s. 29. it is further enacted, “ That trustees, or any seven or more, at a meeting for the purpose, of which one calendar month notice shall be given in writing, to be affixed on the turnpike-gates, or circulated in some newspaper, may lessen or reduce all or any of the tolls on the roads for which they are trustees, for such time as they shall think fit, and afterwards, at a meeting as aforesaid, may, if they shall see occasion, advance all or any of the tolls so lessened, to any sum not exceeding the several rates granted by the acts. But if the whole money borrowed on such tolls is not discharged, no such alterations shall be made, without

Trustees may reduce the tolls at any public meeting.

“ the consent of four fifths of the creditors, for such sums as shall remain due on the respective tolls.”

May direct
prosecution
for nuisances.

† *Stat.* 14. And by 13. Geo. 3. c. 84. f. 47. it is further enacted, “ That the trustees, or any five or more, at a public meeting, may direct prosecutions by indictment against any offender for any nuisance done, committed, or continued, in or upon any turnpike road under their care respectively, at the expence of the revenues belonging to such roads, to be allowed by the trustees, or any five or more, at some subsequent meeting; provided such offender shall confess, or the trustees can support the prosecution by one witness who shall prove the fact.”

May appoint
a toll-keeper.

† *Stat.* 15. And by 13. Geo. 3. c. 84. f. 48. “ And two or more trustees, upon the death of any toll-gatherer or gate keeper, may nominate and appoint another, until the next meeting of the trustees, who shall possess all the powers and privileges of his predecessor.”

May agree
with persons
liable to repair
highways.

† *Stat.* 16. And by 13. Geo. 3. c. 84. f. 62. “ The trustees may agree with any person liable by tenure, inclosure, or otherwise, to repair certain highways, which have become turnpike roads, for the repair thereof, in such manner as they shall think fit, and may contribute so much, on their parts, to the repair thereof, out of the tolls arising from such turnpike road, or out of the statute-duties belonging to the same, as they shall think just and reasonable.”

Shall hang up
tables at toll-
gates, &c.

† *Stat.* 17. And by 13. Geo. 3. c. 84. f. 66. it is further enacted, “ That the trustees of every turnpike road in England shall put up, and afterwards continue upon every toll-gate, within their respective districts, a table of all the tolls payable at every such gate, distinguishing each toll and the different sorts of carriages for which they are to be paid; and also a table of the weights allowed for each carriage, with the loading thereof, in summer and winter. And the said trustees shall from time to time exercise and inspect every weighing engine on their respective roads, to see that the same, with their weights, are in such good order as to weigh the carriages and loading with accuracy.”

Trustees to
order direc-
tion-posts or
stones to be
put up, &c.

† *Stat.* 18. By 13. Geo. 3. c. 84. f. 41. it is also enacted, “ That the trustees appointed to execute any act of parliament made for the repair of any turnpike road, shall direct the surveyor of every such turnpike road where several highways meet, and there is no sufficient direction-post

“ or

“ or stone already fixed or erected, forthwith to erect, or
 “ cause to be erected or fixed, in the most convenient place
 “ where such ways meet, a stone or post, with an inscription
 “ thereon in large letters, containing the name of, and
 “ distance from, the next market-town or towns, or other
 “ considerable place or places to which the said highways
 “ respectively lead; and also at the several approaches or
 “ entrances to such parts of any highways as are subject to
 “ deep or dangerous floods. graduated stones or posts, de-
 “ noting the depth of water in the deepest part of the same,
 “ and likewise such direction-posts or stones as the said
 “ trustees shall judge to be necessary, for the guiding of
 “ travellers in the best and safest track through the said
 “ floods or waters, and also shall order the said surveyor to
 “ erect mile stones or posts upon such turnpike road, with
 “ proper inscriptions and figures thereon, denoting the
 “ names and distances from the principal towns or places on
 “ each respective road, and from time to time to repair such
 “ stones and posts, and keep and continue legible the in-
 “ scriptions thereon respectively; and the said surveyor
 “ shall be reimbursed the expences of providing, erecting,
 “ repairing, and continuing the same respectively, out of the
 “ tolls and duties granted by such acts respectively; and
 “ in case any surveyor shall, by the space of three months
 “ after such direction to him or them given, neglect or
 “ refuse to cause any such stone or post to be fixed or re-
 “ paired as aforesaid, every such offender shall forfeit the
 “ sum of twenty shillings.”

As to THE SECOND POINT, *viz.* the construction of weighing engines, the weight allowed, and additional toll.

+ *Sect. 19.* It is further enacted by the said statute, part 1. May erect
 “ That all trustees appointed by any act of parliament for weighing en-
 “ any turnpike road in *England*, or any five or more of them, gines.
 “ at some public meeting. if they shall think proper, at as
 “ many turnpike gates as they shall erect (1) for the re- (1) But toll-
 “ ceiving toll, or upon any part of the road within their gates ought
 “ respective jurisdictions, and at such a distance as they not to be es-
 “ shall think expedient, shall and may cause to be erected tablished in the
 “ a crane, machine, or engine, proper for weighing of carts, middle of
 “ waggons, or carriages, conveying of any goods or mer- great towns,
 “ chandize whatever, and by writing signed by them, or so as to ob-
 “ any five or more of them, shall and may order every such struct the ne-
 “ carriage which shall pass loaded through every such gate cessary inter-
 “ or bar, to be weighed with the loading thereof.” course.
 1. Burr. 377.

+ *Sect. 20.* But by 13. Geo. 3. c. 84. s. 34. it is provided,
 “ That no toll-gate shall be erected on the side of any turn-
 “ pike road, unless ordered by the trustees at a meeting, of

“ which twenty-one days public notice shall have been
 “ given in writing, affixed upon all the toll-gates erected on
 “ such roads, and also in some public newspaper circulated
 “ in that part of the country, specifying the place where
 “ such side gate is proposed to be erected, and unless nine
 “ trustees at least (being a majority of those present) shall
 “ sign the said order at such meeting; and that no person
 “ shall be liable to pay toll at any toll gate erected, or to be
 “ erected, across or on the side of any turnpike road, or be
 “ subject to any penalty for any carriage, horse, or beast,
 “ which shall only cross such road, and shall not pass above
 “ one hundred yards thereon, except over some bridge
 “ erected at a considerable expence by the trustees of such
 “ turnpike road.”

The burthen
 with which
 carriages are
 allwed to
 pass.

+ *Stat. 21.* And by 13. Geo. 3. c. 84. s. 1. it is further
 enacted, “ That the trustees shall take, over and above the
 “ tolls, a certain sum for every one hundred and twelve
 “ pounds which every such waggon or cart, together with
 “ the loading thereof, shall weigh over and above the following
 “ weights: To every four-wheel carriage having fellies of
 “ sixteen inches, eight tons in summer, and seven in win-
 “ ter.—To every waggon or wain having the axletrees
 “ thereof of such different lengths that the distance from
 “ wheel to wheel of the nearer pair of the said wheels be
 “ not more than four feet two inches, to be measured at the
 “ ground, and that the distance from wheel to wheel of the
 “ other pair thereof be such, that the fore and hind wheels
 “ of such waggons and wains shall roll only one single
 “ surface or path of sixteen inches wide at the least, on each
 “ side of the said waggons or wains, and having the fellies
 “ thereof of the breadth of nine inches from side to side at
 “ the bottom or sole thereof, six tons ten hundred in sum-
 “ mer, and six tons in winter.—To every waggon or four-
 “ wheeled carriage having the sole or bottom of the
 “ fellies of the wheels of the breadth of nine inches, six tons
 “ in summer, and five tons ten hundred in winter.—To
 “ every cart having the fellies of the same dimensions, three
 “ tons in summer, and two tons fifteen hundred in winter.
 “ —To every waggon having the sole or bottom of the
 “ fellies of the wheels of the breadth of six inches, four tons
 “ five hundred in summer, and three tons fifteen hundred
 “ in winter.—And to every such waggon so constructed as
 “ to roll and actually rolling a surface of eleven inches, by
 “ the wheels thereof, five tons ten hundred in summer, and
 “ five tons in winter.—To every cart having fellies of the
 “ wheels of the same dimensions, two tons twelve hundred
 “ in summer, and two tons seven hundred in winter.—To
 “ every waggon having the sole or bottom of the fellies of
 “ the

“ the wheels of less breadth than six inches, three tons ten hundred in summer, and three tons in winter.—And to every cart having the fellyes of the wheels of the same dimensions, one ton ten hundred in summer, and one ton seven hundred in winter.—And for the several purposes aforesaid, it shall be deemed summer from the 1st May to 31st October, both inclusive, and winter from 1st November to 30th April, both inclusive.”

† Sect. 22. By 14. Geo. 3. c. 82. “ All trustees, or any five or more of them, are impowered to take and receive over and above the tolls already granted, the following sums of money : For every one hundred and twelve pounds which any waggon, cart, or carriage, together with the loading, shall weigh at any weighing engine, over and above the weights allowed as above, viz.—For the first and second hundred weight, three-pence each.—For every hundred weight of such over weight above two hundred weight, and not exceeding five hundred weight, six-pence.—For every hundred weight of such over weight above five hundred weight, and not exceeding ten hundred weight, two shillings and six-pence ; for every hundred weight of such over weight above ten hundred weight, and not exceeding fifteen hundred weight, five shillings.—For every hundred weight of such over weight above fifteen hundred weight, twenty shillings. The money arising from such additional tolls to be applied to the roads where they are collected. But the trustees within ten miles of *London, Westminster, and Southwark*, are empowered at their general or quarterly meetings to lower the additional tolls hereby directed to be taken as aforesaid, as to them shall seem fit.”

The additional toll to be paid for extra weight.

† Sect. 23. And by 13. Geo. 3. c. 84. f. 9. it is further enacted, “ That any trustee, creditor, clerk, treasurer, or surveyor, on suspicion of fraud, may cause any carriage liable to be weighed which shall have passed through any toll-gate where such weighing engine shall be erected, and shall not have passed above three hundred yards beyond such toll-gate, to return to such weighing engine, and be then weighed with the loading which passed through such gate in the presence of the said trustee, creditor, clerk, treasurer, or surveyor, upon requiring the driver thereof to drive back to such weighing engine, and upon tendering him one shilling for so doing, which shall be returned to the person paying the same, if the weight shall be found excessive.”

Trustees, &c., may personally cause carriages to return to the weighing engine.

+ *Seff.* 24. And by 13. Geo. 3. c. 84. f. 2. "Every toll-gate keeper, where such engine shall be erected, shall weigh all such carriages as he shall suspect to be laden with greater weights, and receive the additional tolls, upon pain of forfeiting five pounds."

Trustees shall make places for the carriages to turn.

+ *Seff.* 25. And by 13. Geo. 3. c. 84. f. 4. it is further enacted, "That the trustees shall cause the surveyors to make convenient places for turning such carriages where such weighing engine shall be erected, within three hundred yards of such toll-gate, on each side thereof, if the ground will admit of the same. And a list of the names of all the trustees, creditors, the clerk, treasurer, and surveyor, shall be put up in the house where such weighing engine shall be placed, to be inspected by the owner or driver of every such carriage: and if the driver refuse to

The names of the trustees, &c. shall be affixed in the house.

return, he shall forfeit forty shillings, and any peace-officer or other person being present upon such refusal, may drive such carriage back, in order to be weighed as aforesaid."

Driver refusing to return, &c.

Carriages exempted from being weighed.

+ *Seff.* 26. But by 14. Geo. 3. c. 82. "No waggon, cart, or carriage employed in husbandry, or carrying only manure or lime for the improvement of land, as hay, straw, fodder, or corn unthreshed (excepting hay or straw carried for sale), shall be weighed at any weighing engine."

Justices upon complaint made, may order weighing engines to be erected where they think proper.

+ *Seff.* 27. And by 13. Geo. 3. c. 84. f. 7. it is provided, "That the justices at general quarter-sessions, upon complaint by any justice or two creditors, or two trustees, that such turnpike road is much damaged by excessive weights, and that no engine hath been erected upon the same, may summon the clerk, surveyor, and treasurer of such turnpike road, to their next general quarter-sessions, to shew cause why the same should not be erected at or near such gate; upon such turnpike roads as shall be described in such summons; and if at such subsequent sessions the said clerk, surveyor, and treasurer, some or one of them, shall not appear, or appearing shall not shew sufficient cause against the erecting thereof, the said justices, at such quarter-sessions, may order one or more weighing engine at such place; a copy of which order shall be forthwith delivered to the clerk of such road; and the trustees, at their next meeting, after their clerk shall have been served with such copy of the order, may contract with proper persons for the making and erecting the same; and the treasurer shall pay the expences thereof out of the money
" which

“ which shall then be, or next come into his hands, from
 “ the tolls arising upon such turnpike road.”

† *Sec. 28.* By 13. Geo. 3. c. 84. f. 8. it is also provided, Where two or more roads meet, trustees may erect one weighing engine to accommodate them.
 “ That when turnpike roads meet at or near the same place,
 “ the trustees respectively shall fix upon some convenient
 “ place to erect a weighing engine upon, which will accom-
 “ modate all such roads, and proportion the expences
 “ thereof, and forfeitures at such engine, amongst all such
 “ turnpike roads.”

† *Sec. 29.* And by 13. Geo. 3. c. 84. f. 9. “ The trustees Trustees not to make composition for tolls, unless waggons, &c. have the full-
 “ or their lessee shall not make composition for tolls, in
 “ respect of any carriage, or horses, or beasts of draught,
 “ drawing the same, unless they have the fullness of the
 “ wheels of the breadth of six inches, or more.”
ness of the wheels of six inches broad.

† *Sec. 30.* And by 13. Geo. 3. c. 84. f. 10. “ If any Five pounds penalty on unloading goods before coming to any gate or weighing engine.
 “ person shall unload goods from any carriage (except such
 “ carriages as are before excepted) before the same shall come
 “ to any turnpike gate or weighing engine, or shall load
 “ upon such carriage (except as aforesaid), after the same
 “ shall have passed any such turnpike or weighing engine,
 “ any goods, taken from any horse, or other carriage be-
 “ longing to, or hired, or borrowed by the same waggoner
 “ or carrier, in order to avoid the payment of the additional
 “ duties, as aforesaid, and if any person shall so unload, in
 “ order to carry considerable quantities of goods through
 “ any turnpike gate, in one and the same day, and thereby
 “ pay less toll at such turnpike gate than would have been
 “ paid if such goods had not been so unloaded, on conviction
 “ before one justice, upon the oath of one witness, he shall
 “ forfeit five pounds. And each and every driver, not being
 “ the owner, who shall so offend, on conviction, as afore-
 “ said, shall be committed to the house of correction for one
 “ month.”

† *Sec. 31.* And by 13. Geo. 3. c. 84. f. 11. “ If the Penalty for avoiding the weighing engine.
 “ owner of any carriage, or the driver travelling on any
 “ turnpike road where any toll-gate or weighing engine is
 “ erected, shall drive or turn out of the same into any other
 “ road, in order to avoid being weighed, or paying toll, and
 “ shall afterwards proceed with such carriage into and on
 “ the same turnpike road, every such owner or driver, con-
 “ victed as aforesaid shall forfeit, if he be the owner, any
 “ sum not exceeding five pounds, nor less than twenty shil-
 “ lings; and if he be the driver, and not the owner, not
 “ ex-

“ exceeding fifty shillings, nor less than ten shillings, for
 “ every such offence.”

As to THE THIRD POINT, viz. The regulation of carriages.

† *Seet.* 32. It is enacted by 13. Geo. 3. c. 84. s. 13.
 “ That no four-wheeled carriage having the bottom of the
 “ fellics nine inches broad, shall be drawn on any turnpike
 “ road with more than eight horses; nor any two-wheeled
 “ carriage having wheels of the breadth aforesaid, with
 “ more than five horses; and the horses shall draw in pairs
 “ (except an odd horse in any team, and except where the
 “ number of horses shall not exceed four). And also, that
 “ no four-wheeled carriage having the bottom of the fellics
 “ of the breadth of six inches, shall be drawn in any turn-
 “ pike road with more than six horses; and that no two-
 “ wheeled carriage having wheels of the breadth last-men-
 “ tioned, shall be drawn with more than four horses; and
 “ no four-wheeled carriage having fellics less than six
 “ inches, with more than four horses; and no two-wheeled
 “ carriage having fellics less than six inches, with more
 “ than three horses; and the owner shall forfeit five pounds,
 “ and the driver, not being the owner, twenty shillings, for
 “ every offence, to any person who shall sue for the same.”

Wide Burrow
 2258.

Rollers with
 flat surfaces
 may be drawn
 with any
 number of
 horses.

† *Seet.* 33. But by 13. Geo. 3. c. 14. it is provided,
 “ That all carriages moving upon rollers of sixteen inches
 “ on each side thereof, with flat surfaces, may be drawn
 “ with any number of horses, or other cattle.”

† *Seet.* 34. And by 14. Geo. 3. c. 81. s. 5. “ All such
 “ carriages shall only pay half the tolls directed by this
 “ act.”

Prosecutions
 not to be com-
 menced, un-
 less infor-
 mation be laid
 within three
 days after the
 offence is
 committed.

† *Seet.* 35. By 13. Geo. 3. c. 84. s. 15. “ No prosecution
 “ shall be commenced before a justice by information, for
 “ any forfeiture incurred by the owner or driver having a
 “ greater number of horses, unless such information be laid
 “ within three days after the offence committed; and no
 “ action, unless commenced within one calendar month;
 “ and neither such information or action, unless notice be
 “ given by the informer to the driver on the day the offence
 “ shall be committed, of an intention to complain of such
 “ offence: and if the offender lives so remote as to make it
 “ inconvenient to summon him, the justice may dismiss the
 “ complaint, and leave the informer to his remedy by action
 “ at law.”

+ *Sect. 36.* And by 13. Geo. 3. c. 84. f. 17. it is further enacted, "That if any person shall take off any horse, or other beast of draught, from any carriage, or shall alter the distance of the wheels before the same shall come to any of the turnpikes, with intent to avoid any toll, forfeiture, or penalty, for drawing with a greater number of horses, or beasts of draught, than is hereby allowed, on conviction before one justice, upon the oath of one witness, shall forfeit five pounds." Penalty for taking off horses, &c.

+ *Sect. 37.* And by 13. Geo. 3. c. 84. f. 18. it is further enacted, "That if it shall appear to the trustees, or any seven of them, at any of their public meetings, by the oath of one witness experienced in levelling, that any part of the rise of any hill shall be more than four inches in a yard, they may allow such number of horses as they shall judge necessary, not exceeding ten, for waggons with nine-inch wheels, nor six, for carts with nine-inch wheels, and not exceeding seven, for waggons with six-inch wheels, nor five, for carts with six-inch wheels; and not exceeding five, for waggons with wheels of less breadth than six inches, nor four, for carts with wheels of less breadth than six inches. And in case it shall appear to the said trustees, in manner aforesaid, that the whole rise of any hill taken together shall be more than four inches in a yard upon an average, the said trustees, or any seven of them, may allow such number of horses as they shall think fit to be used in such waggons and carts respectively, for the purpose only of drawing the same up such hill or hills as aforesaid, the length and extent of such hill or hills to be specified in such order of allowance, and the termination at each end thereof to be marked by a post or stone, to be erected at such respective boundaries; and the said order of allowance shall be certified by the said trustees, or their clerk, to the next general quarter-sessions, of the limit within which such hill or hills shall respectively be situated: and if the facts shall be proved upon the oath of one witness to the satisfaction of the bench, the said order shall be confirmed and filed, or otherwise vacated and quashed: and from and after such confirmation and filing, no person shall be liable to any penalty or forfeiture for using such number of horses as shall be so allowed in drawing any waggon or cart up such hill or hills respectively; and the said justices, at any subsequent quarter-sessions of the peace, may re-consider the said order of allowance, and to discharge the same if they think fit." They may allow such number of horses as they think fit, up hills rising more than four inches in a yard, to be specified in the order of allowance.

Exemption
with respect
to deep snow
or ice.

§ 38. But by 13. Geo. 3. c. 84. f. 19. it is provided, "That if it shall appear, upon the oath of credible witnesses, to the satisfaction of any justice or justices of the peace, or of any court of justice, authorized to enforce the execution of this act, that any waggon, cart, or carriage could not, by reason of deep snow or ice, be drawn with the respective weights, and by the number of horses or beasts of draught hereby respectively allowed; then, and in every such case, it shall and may be lawful for such justice or justices of peace, or court respectively, and they are hereby respectively required to stop all proceedings before them respectively, for the recovery of any penalty or forfeiture which may have been incurred by drawing with a greater number of horses or beasts of draught than are hereby allowed; any thing herein contained to the contrary notwithstanding."

Narrow-
wheeled wag-
gons not to be
drawn by hor-
ses in pairs.

§ 39. And by 13. Geo. 3. c. 84. f. 20. it is further enacted, "That no carriage having the bottom of the fellics of less breadth than nine inches, shall pass upon any turnpike road drawn by horses in pairs, other than and except such carriages having the fellics of six inches, as shall be authorized to be drawn in any other manner by the order of trustees, within their district, made at a public meeting, consisting of seven trustees or more, which order the said trustees may revoke at any subsequent meeting, and afterwards make a new one fixed in writing upon every toll gate within such district, and except carriages drawn by two horses only."

§ 40. And by 13. Geo. 3. c. 84. f. 59. it is also enacted, "That the justices of the peace for *Hales*, at their general quarter-sessions, to be held in the week after *Michaelmas*, may license an increase of the number of horses to be employed in drawing carriages on turnpike roads within their respective jurisdictions, over and above the number hereinbefore limited, if the state of the roads make such an increase necessary, which order they may revoke, alter, or vary, at any subsequent *Michaelmas* session."

For the man-
ner in which
they are to be
marked vide
ante, p. 210.

§ 41. And by 13. Geo. 3. c. 84. f. 21. it is further enacted, "That in case any person shall drive any carriage not being marked according to the directions of this act, or drawn by more than the number of horses or beasts of draught hereby respectively authorized, any constable, tythingman, surveyor, or other person, may apprehend and take such person before a justice where the offence shall

“ shall be : and, on conviction by confession, or the oath of
 “ one witness, shall forfeit not exceeding five pounds, nor
 “ less than ten shillings.”

+ *Sec. 42.* And by 13. Geo. 3. c. 84. s. 2. it is further
 enacted, “ That the trustees appointed by any act of parli-
 “ ament for repairing particular roads, or any five or more,
 “ within their respective districts, at the first meeting after
 “ this act, do mitigate, lessen, and reduce the high and ex-
 “ traordinary tolls imposed by such certain particular acts,
 “ to an equality with the tolls and duties imposed by this
 “ act respectively.”

+ *Sec. 43.* By 13. Geo. 3. c. 84. s. 67. it is further
 enacted, “ That in all carriages wherein oxen or neat
 “ cattle shall be used, two oxen or neat cattle shall be con-
 “ sidered as one horse, for all the purposes mentioned in
 “ this act, or any particular turnpike act, with respect to
 “ tolls or other things.”

Two oxen to
 be considered
 as one horse.

+ *Sec. 44.* By 13. Geo. 3. c. 84. s. 68. it is enacted,
 “ That the owner of every waggon, wain, or cart, and also
 “ of every coach, post-chaise, or other carriage, let to hire,
 “ shall paint, or cause to be painted, upon some con-
 “ spicuous part of his waggon, wain, or cart, and upon the
 “ pannels of the doors of all such coaches, post-chaises, or
 “ other carriages, before the same shall be used upon any
 “ turnpike road, his or her christian and surname, and the
 “ place of his or her abode, in large legible letters, and
 “ continue the same thereupon, so long as such waggon,
 “ cart, coach, post chaise, or other carriage, shall be used
 “ upon any such turnpike road : and the owner of every
 “ common-stage waggon or cart, employed in travelling
 “ stages from town to town, shall, over and above his or
 “ her christian and surname, paint, or cause to be painted,
 “ on the part and in the manner aforesaid, the following
 “ words, COMMON STAGE WAGGON (or CART, as
 “ the case may be), and every person using any such car-
 “ riage, as aforesaid, upon any turnpike road, without the
 “ names and descriptions painted thereon respectively, as
 “ aforesaid, or who shall paint, or cause to be painted, any
 “ false or fictitious name, or place of abode, on such waggon,
 “ wain, cart, coach, post-chaise, or other carriage, shall
 “ forfeit, for every such offence, a sum not exceeding five
 “ pounds, nor less than twenty shillings.”

Name of the
 owner of eve-
 ry waggon,
 Sec. used for
 hire, to be
 painted upon
 it.

As to THE FOURTH POINT, viz. Exemptions from tolls.

Waggons, &c. moving on rollers of the breadth of sixteen inches on each side, with flat surfaces, to pass toll-free for one year, and then after paying one half of the toll.

† *Seet.* 45. "It is enacted by 13. Geo. 3. c. 84. f. 26. and by 14. Geo. 3. c. 82. f. 5. that all carriages moving upon rollers of the breadth of sixteen inches on each side, with flat surfaces, shall pass upon any turnpike road, through any toll-gate or bar, toll-free, upon paying only so much of the tolls and duties as shall not exceed one half of the full toll or duty payable by this or any turnpike act, for all waggons, wains, or carts, having the fellies of the wheels of the breadth or gauge of six inches from side to side, or for the horses or beasts of draught drawing the same, and not rolling a surface of sixteen inches on each side; and that no more than half toll shall be paid in respect of waggons having the fellies of the wheels thereof of the breadth of nine inches, and rolling a surface of sixteen inches on each side."

Carriages to which the act does not extend.

† *Seet.* 46. But by 13. Geo. 3. c. 84. f. 27. it is provided, "That nothing therein contained shall extend to any chaise, marine, coach, landau, berlin chariot, chaise, chair, calash, or hearse, or to the carriage of such ammunition or artillery as shall be for his majesty's service, or to any cart or carriage drawn by one horse, or two oxen, and no more; or to any carriage having the sole or bottom of the fellies of the wheels thereof of the breadth of nine inches, which shall be laden with one block of stone, one piece of marble, one cable rope, one piece of metal, or one piece of timber."

Penalty on persons fraudulently taking the benefit of any exemption is not to exceed five pounds.

† *Seet.* 47. By 13. Geo. 3. c. 84. f. 28. it is also provided, "That if any person shall take the benefit of any exemptions, under any act for the repair of any turnpike road, in any fraudulent or collusive manner whatsoever, he shall forfeit not exceeding 5*l.* nor less than 40*s.* for every such offence."

Baggage waggons exempted.

† *Seet.* 48. And by 18. Geo. 3. c. 63. f. 2. it is enacted, "That no toll shall be taken for any horses belonging to officers or soldiers upon their marches, or upon duty, or for any horses, cattle, or carriages employed in carrying their arms or baggage, or any sick, wounded, or disabled officers or soldiers; and no carriages so employed shall be weighed, or the owner or driver liable to any forfeiture for carrying greater weight than allowed by law."

† *Seet.*

† *Sec. 49.* And by 13. Geo. 3. c. 84. s. 24. it is further enacted, "That no person shall take exemption from toll, in respect of any carriage, or horse drawing the same, and carrying any particular kind of goods, unless such carriages have the sole of the bottom of the fellics of the breadth of six inches, or upwards (other than and except carts and carriages employed in carrying corn, or grain in the straw, hay, straw, fodder, dung, lime for the improvement of land, or other manure, or any implements of husbandry only), but that the usual toll, together with the additional tolls hereby required to be taken for carriages having the bottom of the fellics of less breadth than six inches, as aforesaid, and for and in respect of horses or beasts of draught, drawing the same (except as before excepted), shall be paid as if no exemption or less toll had been allowed, and as fully as all other carriages and horses drawing the same."

No exemption from toll by former acts to be claimed by any person, unless where carriages with six inch fellics are used.
Carts, &c. employed in husbandry excepted.

† *Sec. 50.* It has been decided on this clause, that a carriage which has paid the toll on passing through the turnpike empty for the purpose of returning loaded with dung, is entitled to receive back the toll if paid on returning loaded with any of the articles of manure mentioned in the act.

Harrison v. James, B. R. Mich. 28. Geo. 3.

† *Sec. 50^a.* But by 13. Geo. 3. c. 48. s. 25. it is provided, "That no person be allowed to take the benefit of any such exemptions, or to have the privilege herein-before given of compounding in respect of any carriage having the fellics of the wheels thereof of the breadth of six inches, or upwards, unless the fellics and the tire of such fellics shall lie flat."

No benefit to be taken of exemptions, unless the fellics lie flat.

† *Sec. 51.* And by 16. Geo. 3. c. 39. s. 2. "The fellics or tire wherof shall not deviate more than one inch from a flat surface, shall be taken to be flat, according to the intent and meaning of this act."

† *Sec. 52.* By 13. Geo. 3. c. 84. s. 60. "No toll shall be collected for carriages solely employed in carrying materials for the repair of any turnpike road or public highway, or for going to or returning from such employment."

† *Sec. 53.* By 25. Geo. 3. c. 57. "All carriages of what description soever, or horses which shall be employed in conveying from one part of this Kingdom to another, the mail or packet which shall be made up under the authority and direction of the post master-general, or his deputies, shall be exempted, freed, and discharged from the payment of any tolls whatsoever, that shall or may be demanded

The mail coaches exempted from toll.

“manded for the passage of carriages or horses through any
 “turnpike, toll-gate, or bar, at which any toll is collected
 “by any act or acts of parliament now in force; and all
 “turnpike-keepers or toll-collectors are hereby directed
 “and required to permit such carriages and horses to pass
 “through all and every turnpike, toll-gate, or bar, with-
 “out demanding any toll or duty for so doing.”

Toll for cattle
 going to or
 from water or
 pasture.

† *Stat.* 54. By 17. Geo. 3. c. 16. “Whereas an exemp-
 tion from toll by several particular turnpike acts hath
 been granted for cattle going to and from water or pas-
 ture, and many disputes have arisen how far that exemp-
 tion extended,” it is enacted, “That in all cases where any
 “exemption from toll for cattle going to and from water
 “or pasture is or shall be given by any turnpike act, such
 “exemption shall only extend to such cattle as shall be
 “driven to and from water or pasture from one parish to
 “the next adjoining parish, or to such cattle as shall not
 “pass upon any such turnpike road more than for the
 “space of two miles in going to or returning from water
 “or pasture.”

As to THE FIFTH POINT, *viz.* The statute duty.

All statute-
 duty to be per-
 formed in the
 parish, &c.
 where it
 arises.

† *Stat.* 55. It is enacted by 13. Geo. 3. c. 84. s. 32.
 “That surveyors shall cause the statute-duty required by
 “the respective turnpike acts, and the compositions arising
 “from the same, to be performed, laid out, and expended
 “upon the turnpike road lying within the parish, township,
 “or place, from which such duty shall be required, and
 “not elsewhere, and shall forfeit forty shillings for every
 “misapplication thereof; and that where there are two or
 “more turnpike roads under several acts of parlia-
 “ment within the same parish, township, or place, and the
 “statute-duty shall exceed three days duty in the whole;
 “two justices shall, at some special sessions, adjudge the sta-
 “tute-duty betwixt such turnpike roads and the other
 “highways in such parish, township, or place, the said
 “justices, previously summoning the clerks and surveyors
 “of such turnpike roads, and likewise the surveyors of the
 “highways, who are hereby respectively required to attend
 “such summons.”

If more turn-
 pike roads
 than are in the
 same parish,
 and the sta-
 tute-duty re-
 quired to them
 exceeds three
 days, the jus-
 tices may ad-
 judge the pro-
 portions.

As to THE SIXTH POINT, *viz.* Materials for repairs.

† *Stat.* 56. It is enacted by 13. Geo. 3. c. 84. s. 61.
 “That no surveyor shall gather any stones for the use of
 “the highways, upon or from the common fields or in-
 “closed lands or grounds of any person, without the con-
 “sent of the occupiers of such lands or grounds, or a li-
 “cence

" cence from a justice of the limit where such lands or grounds lie for that purpose, after having summoned such occupier to come before him and heard his reasons, if he shall appear and give any, for refusing his consent."

† *Sect. 57.* But by 13. Geo. 3. c. 84. s. 65. " That every treasurer and surveyor of any turnpike road, who hath not already given proper security to the trustees of such turnpike road, duly to pay and account for the money which hath come, or shall come to his hands, as treasurer or surveyor, shall, on or before the twenty-fifth day of *December* next, and every succeeding treasurer and surveyor shall, within one month after his appointment, give a bond to the said trustees, with a sufficient surety, in such penalty as the said trustees, at any public meeting, shall direct, conditioned for the duly paying and accounting for all such money which shall be then in his hands, or which he shall afterwards receive, as treasurer or surveyor, according to the directions of the said acts of parliament respecting such turnpike road; which bond shall be wrote upon paper without any stamp thereupon."

Treasurers and surveyors who have not given security shall give bond, &c.

† *Sect. 58.* And by 13. Geo. 3. c. 84. s. 36. it is further enacted, " That on every turnpike road where a sufficient quantity of stone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams required to perform statute-duty upon the same, the surveyor, with the approbation of the trustees of such road, shall, and is hereby required to contract for the getting and carting thereof, at some time and place to be fixed for that purpose, of which ten days notice in writing shall be given, by fixing the same on the door of the church or chapel of such parish, township, or place; or if there be no church or chapel, at the most public place there, which notice shall specify the work to be done, and the time and place for letting thereof: and if any surveyor shall have any part, share, or interest, directly or indirectly, in any such contract, or in any other contract or bargain, for work or materials to be made, done, or provided, upon, for, or on account of any of the highways, roads, bridges, or other works under his care or management; or shall, upon his own account, directly or indirectly let to hire any team, or sell or dispose of any timber, stone, or other materials to be used or employed in making or repairing such roads, bridges, or other works, as aforesaid, unless a licence in writing for the sale of any such materials, or for letting to hire any such team, be first obtained from the said trustees; he shall forfeit, for every such offence, the sum of ten

Surveyor to get and carry away materials by contract, &c.

Surveyor to have no share in the contract, nor to sell materials, or hire out any teams

"pounds, and be for ever after incapable of being employed as a surveyor, under the authority of this or any other act of parliament."

As to THE SEVENTH POINT, viz. As to nuisances.

Trustees may direct prosecution for nuisances.

+ *Stat. 59.* It is enacted by 13. Geo. 3. c. 84. s. 37. "That if the surveyor or other person having the care of any turnpike road, shall knowingly suffer to be or remain, for four days in any part thereof, within ten feet on either side of the middle of such road, any post, heaps of stones, rubbish or earth, set up or raised on or above the surface of the said road, by which the passage thereof shall or may be obstructed, impeded, confined, or straitened (other than and except posts, blocks, stones, or banks of earth fixed in the ground, or raised for securing horse or foot roads or passages for water, and all direction-posts and stones), such surveyor or other person shall forfeit forty shillings."

Persons making incroachments forfeit 40s.

+ *Stat. 60.* By the 13. Geo. 3. c. 84. s. 38. it is further enacted, "That if any person shall incroach, by making or causing to be made, any hedge, ditch, or other fence on any turnpike road, within the distance of thirty feet from the middle or centre thereof; or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands, shall turn his or their plough or harrow in or upon any land or ground within the distance of fifteen feet from the middle or centre of any turnpike road made or to be made: every person so offending shall forfeit, for every such offence, forty shillings to such person as shall make information of the same: and it shall be lawful for the trustees who have the care of any such road, or any five or more of them, to cause such hedge, ditch, or fence, to be taken down or filled up, at the expence of the person or persons to whom the same shall belong, and it shall and may be lawful for any one or more justice or justices of the peace of the township where such offence shall be committed, upon proof thereof to him or them made upon oath, to let as well the expences of taking down such hedges as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, rendering the overplus to the owner on demand."

Persons damaging public roads, &c.

+ *Stat. 61.* By 13. Geo. 3. c. 84. s. 39. "And whereas in some places it hath been and may be found necessary, and the trustees of all turnpike roads are hereby authorized and required to secure, or cause to be secured, horse caulkways, and foot caulkways to travel upon, in public

public highways, by posts, blocks, or great stones fixed in the ground, or by banks of earth cast up, or otherwise, from being broken up and spoiled with waggons, wains, carts, or carriages; and forasmuch as several evil disposed persons do or may wilfully or wantonly pull up, cut down, and remove or damage the said posts, blocks, and great stones, so fixed, or to be fixed, as aforesaid, and drive carriages upon such banks and causeways, or against the sides thereof, and also dig or cut down the said banks, which are the securities and defence of the said causeways, whereby the causeways or banks are often ruined and destroyed; and such evil disposed persons do or may break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, and do or may pull down, destroy, obliterate, or destroy any mile-stone, or post, graduated or direction-post or stone, erected or to be erected, upon any turnpike road?" for punishment thereof, be it enacted, "That every person who shall be guilty of any such offence, shall, upon complaint thereof made to any justice of the peace of the limit where the same shall be proved to be done, by the oath of any credible witness, or upon view of the justice himself, forfeit, for every of the said offences, any sum not exceeding five pounds, nor less than ten shillings, and in default of payment thereof, shall be committed to the house of correction of such limit, there to be whipped and sent to hard labour, for any time not exceeding one calendar month, nor less than seven days, at the discretion of such justice, unless the same be sooner paid."

forfeit not exceeding five pounds, nor less than ten shillings.

+ Stat. 62. By 13. Geo. 3. c. 84. s. 40. "And whereas many bad accidents happen, and great mischiefs are frequently done upon the streets and highways, being turnpike roads, by the negligence or wilful misbehaviour of persons driving carriages thereon:" it is therefore enacted, "That if the driver of any cart, dray, or waggon, shall ride upon any such carriage, in any street or highway, not having some other person on foot or on horseback, to guide the same (such carriages as are conducted by some person holding the reins of the horse or horses drawing the same excepted), or if the driver of any carriage whatsoever, on any part of any street or highway, shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such street or highway; or shall quit the highway, and go on the other side the hedge or fence inclosing the same; or wilfully be at such distance from such carriage, or in such a situation, whilst it shall be passing upon such highway, that he cannot have the direction and government of the horses or cattle drawing the same; or

Driver not attending his carriage, or wilfully misbehaving,

forfeits, if not
the owner of
the carriage,
not exceeding
10s.

and if the
owner, not ex-
ceeding 20s.

May be appre-
hended with-
out warrant.

“ shall, by negligence or wilful misbehaviour, prevent,
“ hinder, or interrupt the free passage of any other carriage,
“ or of his majesty's subjects, on the said highways; or if
“ the driver of any empty or unloaded waggon, cart, or
“ other carriage, shall refuse or neglect to turn aside and
“ make way for any coach, chariot, chaise, loaded waggon,
“ cart, or other loaded carriage; or if any person shall
“ drive, or act as the driver of, any such coach, post-chaise,
“ or other carriage let for hire, or waggon, wain, or cart
“ not having the owner's name, as hereby required, painted
“ thereon; or shall refuse to discover the true Christian
“ and surname of the owner of such respective carriage;
“ every such driver so offending in any of the cases afore-
“ said, and being convicted of any such offence, either
“ by his own confession, the view of a justice of peace, or
“ by the oath of one or more credible witnesses or witnesses,
“ before any justice of the peace of the limit where such of-
“ fence shall be committed, shall, for every such offence,
“ forfeit any sum not exceeding ten shillings, in case such
“ driver shall not be the owner of such carriage; and in
“ case the offender be the owner of such carriage, then any
“ sum not exceeding twenty shillings; and in either of the
“ said cases shall, in default of payment, be committed to
“ the house of correction for any time not exceeding one
“ month, unless such forfeiture shall be sooner paid; and
“ every such driver, offending in either of the said cases,
“ shall and may, by authority of this act, with or without
“ any warrant, be apprehended by any person or persons who
“ shall see such offence committed, and shall be immediately
“ conveyed or delivered to a constable, or other peace officer,
“ in order to be conveyed before some justice of the peace, to
“ be dealt with according to law; and if any such driver, in
“ any of the cases aforesaid, shall refuse to discover his name,
“ it shall and may be lawful for the justice of the peace be-
“ fore whom he shall be taken, or to whom any such com-
“ plaint shall be made, to commit him to the house of cor-
“ rection for any time not exceeding three months, or to
“ proceed against him for the penalty aforesaid, by a descrip-
“ tion of his person and the offence, and expressing in his
“ proceeding, that he refused to discover his name.”

As to THE EIGHTH POINT, viz. Subscribers and mort-
gages.

Subscribers
and mort-
gages.

+ *Stat. 63.* And by the 13. Geo. 3. c. 84. s. 35. it is
enacted, “ That if any person shall agree to advance any
“ sum of money, to be employed in the making or repair-
“ ing any turnpike road or highway intended to be made
“ turnpike, and shall subscribe his, her, or their name or
“ names

" names to any writing for that purpose ; every such person shall be liable to pay every sum or sums of money so subscribed, according to the purport of such writing ; and in default of payment thereof within twenty-one days after the same shall become payable, according to the purport of such writing, and shall be demanded by the person to whom the same is made payable by such writing, or if no person be named therein for that purpose by the treasurer, every such treasurer or other person may sue for and recover the same in any of his majesty's courts of record by action of debt, &c."

+ *Stat.* 64. By 13. Geo. 3. c. 84. s. 52. it is further enacted, " That every mortgagee that hath taken or been in possession of any toll, gate, or bar set up or erected on any turnpike road, or of any lands or tenements, the rents and profits whereof are appropriated to the repair of any part of any turnpike road, shall within fourteen days after he, she, or they shall have received notice in writing from the trustees of such turnpike road, or any five of them, render upon oath, to be administered and taken by and before one justice or any one trustee, an exact account in writing, to such trustees, or to any person appointed by them, or any five of them, to be named in such notice, of all monies received by such mortgagee, or by any other person for their use and benefit, or by their authority, at such toll, gate, or bar, or otherwise, and of what they have expended in keeping or repairing the same ; and in case they shall neglect to render such account when required, in the manner herein directed, they shall severally forfeit and pay to the said trustees ten pounds, to be recovered by the said trustees, or any five or more of them, or by the treasurer or clerk to the said trustees, in a summary manner before one justice, to be applied to the use of the respective road whereupon such toll, gate, or bar shall be placed"

Mortgagees shall account for the monies they receive for tolls.
See 2. Term Rep. 169.

+ *Stat.* 65. And by 13. Geo. 3. c. 84. s. 53. " If any such mortgagee shall keep possession of any toll, gate, or bar, or receive the tolls and duty thereof, or of any such rents or profits as aforesaid after such mortgagee shall have received the full sum of money due on his mortgage, and the interest thereof with costs, such mortgagee shall forfeit to the trustees double the sum of money he shall have received over and above the sum due as aforesaid, with treble costs of suit ; to be recovered by the said trustees, or by the treasurer or clerk to such trustees, by action of debt, &c. in any of his majesty's courts of record ; and applied as abovementioned."

Penalties for holding over.

As to THE NINTH POINT, *viz.* As to officers in general.

If the gate-keeper, who is discharged, refuses to deliver up possession of the house, &c. the justices may, by warrant, order him to be removed, with his goods.

+ *Stat.* 66. By 13 Geo. 3. c. 84. f. 54. it is enacted, "That if any toll-gatherer or gate-keeper, who shall be discharged by the trustees, shall refuse to deliver up the possession of the house, &c. within two days after notice of his discharge; or if the wife or family of any such, who shall die, shall refuse within four days after such new appointment shall be made as aforesaid; any justice by warrant shall order the constable, or other peace officer, to remove the persons, together with their goods, out of such house, and to put the new-appointed officer into the possession thereof."

Gate-keepers and surveyors to account upon oath, when required by the trustees, or forfeit 5l.

+ *Stat.* 67. And by 13 Geo. 3. c. 84. f. 55. it is further enacted, "That the gate-keeper or toll-gatherer, and every surveyor shall, when required, by notice in writing from any five of the trustees, render upon oath, before one justice or trustee, a true account in writing of all monies received on account of such turnpike road, not before accounted for, under the penalty of five pounds, to be recovered in a summary manner before any one justice, and applied to the use of the respective road on which such toll-gate shall be placed."

No gate-keeper to be removed as a pauper, unless actually chargeable, &c. nor shall gain a settlement, nor be assessed, &c.

+ *Stat.* 68. And by 13 Geo. 3. c. 84. f. 56. it is further enacted, "That no gate-keeper or other person, renting the tolls, and residing in any toll-house, shall be removable by any justices, in pursuance of any laws for the regulation of the poor, unless he become chargeable to the parish; and that no such gate-keeper, or person as aforesaid, shall thereby gain a settlement; and that no tolls nor any toll-house, nor any person in respect of such tolls or toll-house, shall be assessed to the poor's-rate, or any other public or parochial levy whatsoever."

Gate-keepers permitting horses, or carriages, otherwise than allowed by the act, or without proper inscription, &c. forfeit 40s.

+ *Stat.* 69. And by 13 Geo. 3. c. 84. f. 57. it is further enacted, "That if any toll-gatherer or gate-keeper shall suffer any carriage to pass through any toll-gate or bar with any greater number of horses, or beasts of draught, or with any carriage constructed or drawn in any other manner, than is before directed, or without such names and descriptions painted thereon as are hereby directed, and shall not within one week proceed for the recovery of the forfeiture or penalty in the manner directed by this act, he shall forfeit forty shillings."

Clerks, treasurers, &c. to deliver up their accounts,

+ *Stat.* 70. And by 13 Geo. 3. c. 84. f. 45. it is further enacted, "That all officers appointed by any act for
" the

“ the repair of turnpike roads, their executors or administrators, shall, within ten days after notice in writing by the trustees, or any five or more of them, deliver up all books, accounts, papers, or writings whatsoever, relative to the execution of such respective offices, on pain of forfeiting twenty pounds.”

† *Stat.* 71. And by 13. Geo. 3. c. 84. f. 65. it is further enacted, “ That every treasurer and surveyor shall, within one month after his appointment, give a bond to the trustees, with surety, in such penalty as the said trustees shall direct, for the paying and accounting for all money in his hands, or which he shall afterwards receive, as treasurer or surveyor, according to the directions of the several acts of parliament respecting such turnpike road, which bond shall be wrote upon paper without any stamp thereupon.”—But by 23. Geo. 3. c. 18. f. 15. this exemption from stamps is repealed.

Treasurers and surveyors shall give bond with surety to the trustees, for the money in their hands,

† *Stat.* 72. By 13. Geo. 3. c. 84. f. 73. it is also enacted, “ That every constable, headborough, or tythingman, refusing or neglecting to put this act into execution, or to account for and deliver any forfeiture or penalty, according to the directions of this act, and every surveyor, tollgatherer, and all other persons employed for the repairing roads, as shall receive salaries or rewards, who shall willfully neglect for one week after the offence committed to lay such information upon oath before a justice for the limit wherein such offence was committed, shall, upon due information upon oath before one justice, forfeit ten pounds.”

Vide sect. 72. N. B. Upon what evidence convictions are to be made, and who are good witnesses. Vide a similar clause. 13. Geo. 3. f. 77, & 78. ante, p. 212. f. 190.

† *Stat.* 73. And by 13. Geo. 3. c. 84. f. 74. it is further provided, “ That any justice may act in the execution of this act, notwithstanding he may be a creditor or a trustee for repairing or amending the roads on which any offence contrary to this act was committed.”

† *Stat.* 74. And by 13. Geo. 3. c. 84. f. 75. it is further enacted, “ That whoever shall resist or make forcible opposition to any person employed in the due execution of this act, or any particular act made for amending any particular highway, or shall assault any collector in the execution of his office, or shall pass through any turnpike gate, rail, or chain, or other fence, set up by authority of parliament, without paying the toll appointed to be paid at such gate or other fence, or make rescue of cattle, or any other goods distrained by virtue of this act, or if any constable, headborough, or tythingman, shall refuse

“ refuse

“refuse or neglect to execute any warrant granted by
 “any justice, pursuant to the directions of this act, he shall,
 “on conviction as above, forfeit not exceeding ten pounds,
 “nor less than forty shillings, in the manner directed by
 “13. Geo. 3. c. 78. s. 72.”

As to THE TENTH POINT, *viz.* The repair of altered turnpike roads.

Persons liable to repair old highways damaged or stopped up, shall be liable to repair a part of the new highway equal to the burthen of the old one.

† *Sec.* 75. By the 13. Geo. 3. c. 84. s. 63. it is recited,
 “That parts of highways or turnpike roads have been, or
 “may be, diverted and turned by legal authority, to make
 “the same nearer or more commodious to the publick; and
 “that doubts had arisen, whether the inhabitants, or any
 “particular person, liable to repair the old highway or
 “road, so deviated from by statute duty, tenure, or otherwise,
 “ought to repair, or contribute to the repair of the whole,
 “or some, and what part or proportion of such new high-
 “way or road;” for obviating which doubts, and preventing
 “disputes about the same, IT IS ENACTED, “That the in-
 “habitants of every parish, township, or place, and per-
 “sons liable as aforesaid, to the repair of any such old high-
 “way or road, shall respectively be and continue in the
 “same manner liable to the repair of such new highway
 “or road, or so much thereof as shall be equal to the bur-
 “den and expence which he shall be exonerated, by turn-
 “ing the same, as aforesaid; and that if the parties cannot
 “agree, the same shall be viewed by two justices, and settled,
 “adjusted, and determined by them; and from and after
 “such determination of the justices, the inhabitants, or
 “the person liable to repair, shall bear all charges and ex-
 “pences of indictments and prosecutions for not repairing
 “the same: and if it shall be found more convenient to fix
 “a gross sum, or an annual sum, to be paid by any such
 “inhabitants or person, instead of fixing the part or pro-
 “portion of such new highway or road to be repaired by
 “him, the said justices may, with the consent of such per-
 “son, and of the inhabitants interested therein, obtained
 “at a vestry or public meeting held for that purpose, and
 “also of the trustees at a public meeting, if it be turnpike
 “road, order and direct the same accordingly; which
 “order shall be, and for ever after continue, binding to all
 “persons whomsoever.”

And if the parties cannot agree, it shall be viewed and settled by two justices of the peace.

A gross or annual sum may be paid, if the parties agree thereto.

It hath been determined, that if the trustees turn a road through an inclosure, and make the fences at their own expences, and repair them for several years, they cannot be compelled to continue such repairs, unless there is a special provision in the act to that effect.

† *Sec.* 76. And by 13. Geo. 3. c. 84. s. 33. it is further enacted, "That when the inhabitants shall be indicted or presented for not repairing any highway, being turnpike road, and the court shall impose a fine, the same shall be proportioned, with the costs and charges, between the inhabitants of the parish, township, or place, and the trustees of such turnpike road; and the court shall order the treasurer to pay the sum so proportioned, if it shall appear that the same may be paid without endangering the security of the creditors who have advanced their money upon the tolls to be raised thereupon."

Where turnpike roads are indicted, the court may proportion the fine and costs between the inhabitants and the trustees; without endangering the security of the creditors.

As to THE ELEVENTH POINT, *viz.* How far the powers of the highway act may be adopted.

† *Sec.* 77. It is recited by the said statute, s. 70. "That whereas the powers given by several turnpike acts are ineffectual for the purposes of digging, providing, and carrying materials, for the use of the turnpike roads therein described, and also for the purposes of enlarging, diverting, and turning such turnpike roads, and stopping up, selling, and disposing of the old roads so to be diverted and turned; and also for the making, opening, and cleansing of ditches and drains, and the cutting and pruning of hedges and trees; and also for the calling forth and compelling the performance of the statute duty which shall belong to such turnpike roads: and whereas more ample powers have been given in the acts for highways in general (which highways comprehend and include turnpike roads);" be it therefore enacted, "That the surveyors shall, with the approbation of the trustees of every turnpike road, apply any part of the tolls and statute duty in the execution of all act or acts of parliament for the amendment and preservation of the highways, and shall execute the same upon such turnpike roads respectively, for the several purposes aforesaid."

When the powers for providing materials, enlarging and turning turnpike roads, making drains, pruning hedges and trees, and calling forth the statute duty, are ineffectual, and more ample powers for these purposes are given by the highway act, the surveyors of turnpike roads, with the approbation of the

the trustees, may execute and enforce these powers upon and for the turnpike roads, upon the terms and under the restrictions in the highway act.

As to THE TWELFTH POINT, *viz.* The modes of proceeding.

† *Sec.* 78. By 13. Geo. 3. c. 84. s. 72. it is enacted, "That the forms of proceedings relative to the several matters contained in this act, which are set forth and expressed in the schedule hereunto annexed, shall be used upon all occasions, with such additions or variations only, as may be necessary to adapt them to the particular exigencies of the case; and that no objection shall be made, or advantage taken, for want of form in any such proceedings, by any person or persons whomsoever."

Forms contained in the schedule to be used.

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† *Sec. 79.* But by 13. Geo. 3. c. 84. s. 74. provided always, and be it further enacted, "That no conviction shall be had or made by virtue of this act, unless upon confession of the party accused, or upon the oath of one or more credible witness or witnesses; and that any inhabitant of any parish, township, or place, in which any offence shall be committed contrary to this act, shall be deemed a competent witness, notwithstanding his or her being an inhabitant of such parish, township, or place; and that any justice of the peace may act in the execution of this act, notwithstanding he may be a creditor, or a trustee for repairing and amending the roads, on which any offence contrary to this act shall be committed."

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† *Sec. 80.* And by 13. Geo. 3. c. 84. s. 76. it is further enacted, "That all penalties and forfeitures by this act imposed, for any offence against the same, and all costs and charges to be allowed and ordered by the authority of this act (the manner of levying and recovering of which is not hereby otherwise particularly directed), shall be levied by distress and sale of the goods and chattels of the offender, or person liable or ordered to pay the same respectively, by warrant under the hand and seal of some justice of the peace, for the limit where such offence, neglect, or default shall happen, and such order for payment of such costs or charges shall be made, rendering the overplus of such distress and sale, if any, to the party or parties, after deducting the charges of making the same; which warrants such justices hereby empowered and required to grant, upon conviction of the offender, by confession, or upon the oath of one or more credible witness or witnesses, or upon order made, as aforesaid: and the penalties and forfeitures, costs and charges, when so levied, shall be paid, the one half to the informer, and the other half to the surveyor of the turnpike road where such offence, neglect, or default shall happen, to be employed towards the repair thereof, unless otherwise directed by this act: And in case such distress cannot be found, and such penalties and forfeitures, or the said costs and charges, shall not be forthwith paid, it shall and may be lawful for such justice, and he is hereby authorised and required, by warrant under his hand and seal, to commit such offender or offenders, or person or persons, liable to pay the same respectively, to the common gaol, or house of correction, of the limit where the offence shall be committed, or such order, as aforesaid, shall be made, for any time not exceeding three months, unless the said penalty, forfeiture, costs, or charges, shall respectively be sooner paid. And if such offender or offenders, or person or persons, liable or ordered to pay the same

“ same respectively, shall live out of the jurisdiction of the
 “ justice or justices hereby authorized to grant such war-
 “ rant, it shall and may be lawful for any justice of the peace
 “ of the limit wherein such person shall inhabit, and every
 “ such justice is hereby required, upon request to him for
 “ that purpose made, and upon a true copy of the conviction
 “ whereby such forfeiture or penalty was incurred, or
 “ of the order for the payment of such costs or charges, pro-
 “ duced and proved by a credible witness upon oath, by
 “ warrant, under his hand and seal, to cause the penalty or
 “ forfeiture mentioned in such conviction, or the costs or
 “ charges mentioned in such order, to be levied by distress
 “ and sale of the goods and chattels of such offender or of-
 “ fenders, or person or persons, liable or ordered to pay the
 “ same respectively as aforesaid : and if no sufficient distress
 “ can be had, to commit such offender or offenders, or per-
 “ son or persons, liable as aforesaid, to the common gaol, or
 “ house of correction, of such limit, for the time and in
 “ manner aforesaid.”

† *Stat.* 81. By 13. Geo. 3. c. 84. f. 77. Provided never-
 theless, “ That no warrant of distress, unless otherwise di-
 “ rected by this act, shall be issued for levying any penalty or
 “ forfeiture, costs or charges, until six days after the offender
 “ shall have been convicted, and an order made and served
 “ upon him or her for payment thereof.”

† *Stat.* 82. And by 13. Geo. 3. c. 84. f. 78. provided also,
 and be it enacted, “ That whatever penalty or forfeiture shall
 “ be levied or recovered on the information of the surveyor
 “ of any turnpike road; or of any toll-gatherer, or other
 “ person employed by the trustees appointed for repairing
 “ the roads, and receiving salaries or rewards for their ser-
 “ vices, and not otherwise directed by this act, shall go and
 “ be applied to the amending of the said turnpike roads re-
 “ spectively, and to no other use or purpose whatsoever, any
 “ thing in this or any other act to the contrary notwith-
 “ standing.”

† *Stat.* 83. And by 13. Geo. 3. c. 84. f. 79. it is enacted, Prosecutors may recover by information, or by action, &c.
 “ That every prosecutor or informer may, at his election,
 “ sue for, and recover any forfeiture or penalty imposed by
 “ this, or any other act or acts of parliament made for erect-
 “ ing turnpikes, or for repairing and amending turnpike
 “ roads, in the manner hereafter mentioned, that is to say,
 “ if the same shall not amount to the sum of forty shillings,
 “ it shall be recoverable only by information before a justice
 “ of the peace; and if the same shall amount to forty shil-
 “ lings, or upwards, it shall and may be recovered either by
 “ information,

" information, as aforesaid, or by action of debt, in any of his majesty's courts of record, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of ^{being} forfeited by an act, passed in the thirteenth year of the reign of his present majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, the general laws now in being, for regulating the turnpike roads in that part of Great Britain called England, and for other purposes*, and the plaintiff, if he recover in any such action, shall have full costs: Provided, that there shall not be more than one recovery for the same offence; and that ten days notice in writing be given to the party offending previous to the commencement of such action; and that the same be brought and commenced within one calendar month after the offence for which such action is brought shall have been committed."

Party aggrieved may recover satisfaction for special damages.

† *Sec. 84.* And by 13. Geo. 3. c. 84. s. 80. it is further enacted, " That where any distress shall be made for any sum or sums of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any default or want of form in any proceedings relating thereto, nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the party or parties distraining, but the person or persons aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case."

Tender of amends.

† *Sec. 85.* But by 13. Geo. 3. c. 84. s. 81. " it is provided also, " That no plaintiff or plaintiffs shall recover in any action for any such irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on the behalf of the party or parties who shall have committed, or caused to be committed, any such irregularity, or wrongful proceedings, before such action brought, and in case no such tender shall have been made, it shall and may be lawful for the defendant in any such action, by leave of the Court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he or they shall see fit; whereupon such proceedings or orders, and judgments shall be had, made, and given, in and by such Court, as in other actions where the defendant is allowed to pay money into court."

Money into court.

Appeal.

† *Sec. 86.* But by 13. Geo. 3. c. 84. s. 82. it is provided also, " That if any person shall think himself or herself aggrieved

“grieved by any thing done by any justice or justices of the peace in pursuance of this act, except under the particular circumstances hereafter mentioned, and for which no particular method of relief hath been already appointed, such person may appeal to the justices of the peace, at any general quarter-sessions of the peace, to be held for the limit wherein the cause of such complaint shall arise; such appellant first giving, or causing to be given, to such justice, by whose act or acts such person shall think himself or herself aggrieved, notice in writing of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint arose, and within four days after such notice, entering into recognizance before some justice of the peace, with one sufficient surety, conditioned to try such appeal at, and abide the order of, and pay such costs, as shall be awarded by the justice at such quarter-sessions; and each and every justice of the peace, having received notice of such appeal, as aforesaid, shall return all proceedings whatever had before them respectively, touching the matter of such appeal, to the said justices at their general quarter-sessions aforesaid, on pain of forfeiting five pounds for every such neglect; and the said justices, at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear, and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing, or appealed against, as they the said justices shall think proper, to be levied and recovered as herein-before directed; and the determination of such quarter-sessions shall be final and conclusive to all intents and purposes; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatsoever, into any of his majesty’s courts of record at *Westminster*; any law or statute to the contrary notwithstanding.” No certiorari

† *Seet.* 87. And by 13. Geo. 3 c. 84. s. 83. it is provided, “That no such appeal shall be made against any conviction for any penalty or forfeiture incurred by virtue of this act, unless the person convicted shall, at the time of such conviction, if he shall be then present, if not, within six days after, give, or cause to be given, notice of his or her intention to appeal, and at the same time enter into recognizance, or give security, with sufficient sureties, to pay such penalty or forfeiture, in case such conviction shall be affirmed upon such appeal; and upon his or her giving such security, the further proceedings for such penalty or forfeiture shall be suspended until such appeal shall be heard and determined.” No appeal, unless the party give notice thereof, &c.

Power to administer oaths.

† *Seff.* 88. And by 13 Geo. 3. c. 84. s. 84. it is enacted, "That where any oath is hereby required and directed to be made or taken, the justices of the peace of any limit, or the trustees of any turnpike road, (as the case may be), and according to the several jurisdictions herein given to them respectively, as aforesaid, shall, and they are hereby respectively empowered to administer the same."

Action to be brought within three months, &c.

† *Seff.* 89. And by 13 Geo. 3. c. 84. s. 85. it is further enacted, "That if any action or suit shall be commenced against any person or persons, for any thing done or acted in pursuance of this act; then, and in every such case, such action or suit shall be commenced or prosecuted within three calendar months after the fact committed, and not afterwards; and the same and every such action or suit, shall be brought in the county where the person, against whom such action or suit shall be commenced, doth ordinarily inhabit or reside, or where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit, shall and may plead the general issue, and give this act, and the special matter, in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act: and if the same shall appear to have been so done, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought and laid in any other county than as aforesaid, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action, after the defendant or defendants shall have appeared; or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for recovery thereof, as any defendant or defendants hath or have in any cases by law."

General issue.

Informations for penalties, in order to favour the offender, are deemed fraudulent and void.

Seff. 90. And it is further enacted by the said statute 13 Geo. 3. c. 84. s. 48. That whereas fraudulent contrivances may be practised by offenders, their friends, and others, to evade the just recovery of forfeitures and penalties, by setting up colourable prosecutions, be it enacted, "That justices, where any information or conviction shall be set up by way of defence, or to defeat any information or proceeding on any forfeiture or penalty inflicted as aforesaid, do examine into the real merits; and if it shall appear that the same was done to favour the offender, such information or conviction shall be deemed to be fraudulent, and null and void; and every such justice or justices shall determine and convict, as if no information or conviction had been made, prosecuted, or obtained."

CHAPTER THE SEVENTY-SEVENTH.

OF NUSANCES

RELATING TO

PUBLIC BRIDGES.

AND now I am in the second place to consider nufances By the great
 relating to bridges in particular; for the better under- charter 9. H. 3.
 standing whereof I shall examine, c. 15. notown
 nor freeman
 shall be distrained to make bridges nor banks, but such as of old time and of right have
 been accustomed. See also 2. Inst. 701. 1. Burr. 267.

1. How public bridges are to be repaired by the common law.

2. How by the statute.

As to THE FIRST POINT, I shall consider,

1. In what manner, and by whom, such bridges are to be repaired by common law.

2. In what manner persons bound to such repairs are to be proceeded against.

As to the first of these particulars, viz. In what manner, and by whom, public bridges are to be repaired by the common law.

See 1. It seemeth to be clear, that those who are 43. Affize
 bound to repair such bridges, must make them of such p. 43.
 height and strength, as shall be answerable to the course of Dalton c. 14.
 the water, whether it continue in the old channel, or make
 a new one; and that they are not punishable as trespassers
 for entering on any adjoining land for such purpose, or for
 laying thereon the materials requisite for such repairs.

Also it seemeth to be clearly (a) settled, that of common (a) 2. Inst.
 right the charge of repairing all common bridges, lies upon 701.
 the county wherein they are, unless part thereof be within a Sum. 143.
 franchise; in which case it is said, that so much as is within C. Car. 365.
 the franchise, shall be repaired by those of the franchise. 6. Mod. 337.
 Salk. 356, 359.

(a) 2. Inst. 700. *SecT. 2.* Also it seemeth to be (a) certain, that such charge may be cast upon a corporation aggregate, either in respect of a special tenure of certain lands, or in respect of a special prescription, and that it may be cast upon any other persons (1) by reason of such a special tenure, as hath been shewn more at large under the second general head of the precedent chapter.

(r) Therefore a tenant at will of a house which adjoins to a common bridge, although he is not bound as between landlord and tenant to repair the house, yet if it become dangerously ruinous to the necessary intercourse of the bridge, as tenant at will only, he is bound, *by reason of his possession*, to repair it, so far as to prevent the public being prejudiced. *Ld. Raym. 856.*

(b) 2. Inst. 701. But it is (b) said, that a man shall not be bound to repair a new bridge built by himself, for the common good; but that the county shall be bound to repair it, if it become of public convenience.

3. Burr. 2504. + Therefore where a particular district rebuilt a foot bridge over a more convenient part of the stream, and converted it into a bridge for horses, carts, and carriages; as the district was not bound by custom to build or repair such a bridge, but a foot bridge only, and as they built a quite different bridge, in a different place, which proved of common public utility to the county, the Court were unanimous, that the county, and not the district, were bound to repair it.

As to the second particular, *viz.* In what manner persons bound to such repairs are to be proceeded against.

(c) 1. Jon. *SecT. 3.* It seemeth to be clear (c), that any particular inhabitant or inhabitants of a county, or tenant or tenants of land charged to the repairs of such a bridge, may be made defendants to an indictment for not repairing it, and be liable to pay the whole fine assessed by the Court for the default of such repairs, and shall be put to their remedy at law for a contribution from those who are bound to bear a proportionable share in the charge, for the necessity of the case requires the greatest expedition in cases of this nature.

1175. 1240. 1. Mod. 56. F. N. B. 235. Register 268. 2. Inst. 700. Hard. 131. Cowp. 687. + But no action will lie by an individual against the inhabitants of a county, for an injury sustained in consequence of a county bridge being out of repair.

(d) 2. Lev. *SecT. 4.* Also it hath been (d) resolved, that it is not sufficient for the defendants to an indictment for not repairing a bridge, to excuse themselves by shewing either that they

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are not bound to repair the whole, or any part of the bridge, without shewing what other person is bound to repair the same; and it is said, that in such case the whole charge shall be laid upon such defendants, by reason of their ill plea.

Sec. 5. It is said, that where such defendants plead, that *A. B.* ought to repair the bridge mentioned in the indictment, and take a *traverse* to the charge against themselves, THE ATTORNEY-GENERAL in this special case may take a *traverse upon a traverse*, and insist that the defendants are bound to the repairs, and traverse the charge alleged against *A. B.* and that an issue ought to be taken on such second traverse; and that THE ATTORNEY-GENERAL may afterwards surmise, that the defendants are bound to repair it, and that the whole matter shall be tried by an indifferent jury, &c.

Sec 1. Sid 140.
2. Lev. 112.

+ But the indictment ought to shew what sort of bridge it is, whether for carts and carriages, or for horses, or foot men only. And if the duty to repair arise by reason of the tenure of certain lands, the indictment must shew where those lands lie.

Ld. Raym.
1175.
2. Hale 181.

Sec. 6. It seems, that no inhabitant of a county ought to be a juror for the trial of an issue, whether the county be bound to such repairs or not; but it is said, that he may be a good witness (2).

6. Mod. 307.
Burr. 859.

(2) The same objection may lie against the justices, where they are all interested; in which case the trial shall be in the next county. Vide Burrow 859, 860. But by 1. Ann. an inhabitant may be a witness. Vide post. sect. 20.

As to THE SECOND POINT, viz. In what manner such bridges are to be repaired by statute.

Stat. 7. And by 22. Hen. 8. c. 5. it is enacted, "That the justices of peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof one to be of the *quorum*, may inquire, hear, and determine, in their general sessions, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make such process and pains upon every presentment afore them, for the reformation of the same, against such as owen to be charged for the making or amending of such bridges, as the king's justices of his bench use commonly to do; or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges."

2. Inst. 701,
702.
6. Mod. 255.
A remedy to
repair decayed
bridges.
13. Coke 33.
Popham 192.

Sec. 8. And by 22. Hen. 8. c. 5. f. 2. & 3. it is further enacted, "That where it cannot be known and proved what

Justices may
proceed
against de-
faulters.

“ hundred, riding, wapentake, city, borough, town or parish, nor what person certain, or body politick, ought of right to make such bridges decayed, by reason whereof such decayed bridges, for lack of knowledge of such as owen to make them, for the most part lie long without any amendment, to the great annoyance of the king's subjects; in every such case the said bridges, if they be without city or town corporate, shall be made by the inhabitants of the shire or riding, within which the said bridge decayed shall happen to be: and if it be within any city or town corporate, then by the inhabitants of every such city or town corporate wherein such bridges shall be. And if part of any such bridges so decayed happen to be in one shire, riding, city, or town corporate, and the other part thereof in another shire, riding, city or town corporate, or if part be within the limits of any city or town corporate, and part without, or part within one riding, and part within another, that then in every such case the inhabitants of the shires, ridings, cities or towns corporate, shall be charged and chargeable to amend, make and repair such part and portion of such bridges so decayed, as shall lie and be within the limits of the shire, riding, city or town corporate, wherein they be inhabited at the time of the same decays.”

Justices may
tax the inha-
bitants.
Vide 1. Keb.
422.

Vide infra
12. Geo. 2.
which seems
to make this
part of the act
useless.

SECT. 9. And by 22. Hen. 8. c. 5. s. 4. it is further enacted, “ That in every such case where it cannot be known and proved what persons, lands, tenements, and bodies politick owen to make and repair such bridges, that for speedy reformation and amending of such bridges, the justices of the peace within the shires or ridings wherein such decayed bridges being out of cities and towns corporate, and if it be within cities or towns corporate, then the justices of peace within every such city or town corporate, or four of the said justices at the least, whereof one to be of the *quorum*, within the limits of their several commissions and authorities, may call before them the constables of every town and parish, being within the shire, riding, city or town corporate, as well within liberty as without, wherein such bridges or any parcel thereof shall happen to be, or else two of the most honest inhabitants within every such town or parish in the said shire, riding, city or town corporate, by the discretion of the said justices of peace, &c. And at and upon the appearance of such constables or inhabitants, the said justices of peace, &c. with the assent of the said constables or inhabitants, may tax, and set every inhabitant in any such city, town or parish, within the limits of their commissions and authorities, to such reasonable aid and sum of
“ money,

“ money, as they shall think by their discretions convenient
 “ and sufficient for the repairing, re-edifying, and amend-
 “ ing of such bridges.”

Stat. 10. And by 22. Hen. 8. c. 5. f. 4. “ After such
 “ taxation made, the said justices shall cause the names and
 “ sums of every particular person so by them taxed, to be
 “ written in a roll indented, and shall also have power and
 “ authority to make two collectors of every hundred, for
 “ collection of all such sums of money by them set and taxed;
 “ which collectors receiving the one part of the said roll
 “ indented, under the seals of the said justices, shall have
 “ power and authority to collect and receive all the particular
 “ sums of money therein contained, and to distrain every
 “ such inhabitant as shall be taxed, and refuse payment
 “ thereof, in his lands, goods and chattels, and to sell such
 “ distress, and of the sale thereof retain and perceive all the
 “ money taxed, and the residue (if the distress be better), to
 “ deliver to the owner thereof.”

Two collec-
 tors to be
 made.
 Sed vide infra
 1. Ann. c. 18,
 &c.

Stat. 11. And by 22. Hen. 8. c. 5. f. 4. “ The same
 “ justices, or four of them, within the limits of their com-
 “ missions and authorities, may also name and appoint two
 “ surveyors⁽³⁾, which shall see every such decayed bridge re-
 “ paired and amended from time to time as often as need
 “ shall require, to whose hands the said collectors shall pay
 “ the said sums of money taxed and by them received; and
 “ that the collectors and surveyors, and every of them, and
 “ their executors and administrators, and the executors and
 “ administrators of them, and every of them, from time to
 “ time, shall make a true declaration and account to the jus-
 “ tices of peace of the shire, riding, city, or town corporate,
 “ wherein they shall be appointed collectors or surveyors,
 “ or to four of the same justices, whereof one to be of the
 “ *quorum*, of the receipts, payments, and expences of the
 “ said sums of money.”

(3) The of-
 fice of sur-
 veyors, for
 the sake of
 conveniency,
 is usually an-
 nexed by the
 justices to the
 office of the
 high constab-
 les, 1. Burn,
 280.

Stat. 12. And by 22. Hen. 8. c. 5. f. 4. “ If they or
 “ any of them refuse that to do, that then the same justices
 “ of peace, or four of them, from time to time, by their
 “ discretions, shall have power and authority to make pro-
 “ ceeds against the said collectors and surveyors, and every
 “ of them, their executors and administrators, and the exe-
 “ cutors and administrators of every of them, by attach-
 “ ments under their seals, returnable at the general sessions
 “ of peace: and if they appear, then to compel them to ac-
 “ count, as is aforesaid; or else if they or any of them re-
 “ fuse that to do, then to commit such of them as shall re-
 “ fuse to ward, there to remain without bail or mainprize,
 “ till the said declaration and account be truly made.”

Justices may
make process
into every
shire.

Stat. 13. And by 22. Hen. 8. c. 5. f. 5. it is further enacted, "That where any bridge or bridges lying in one shire or riding, and such persons inhabitants, bodies politicke, lands or tenements, which owen to be charged with the making and amending of such bridges lien and abiden in another shire or riding, or where such bridges been within any city or town corporate. and the persons inhabitants, bodies politicke, lands or tenements, that owen to make or repair any such bridges lien and been out of the said cities and towns corporate, in every such case the justices of peace of the shire, city, or town corporate, within which such decayed bridges, or any part thereof, shall happen to be, shall have power to enquire, hear, and determine all such annoyances, being within the limits of their commissions and authorities. And if the annoyance be presented, then to make process into every shire within this realm, against such as owen to make or amend any such bridges so presented before them to be decayed, to the annoyance and let of the passage of the king's subjects, and to do further in every behalf in every such case, as they might do by authority of the said act, in case that the persons, &c. which owen to be charged to the amending or making of such bridges, &c. were in the same shire, &c. where such annoyance shall happen to be."

Which the
sheriffs shall
serve.

Stat. 14. And by 22. Hen. 8. c. 5. f. 5. "All sheriffs, and bailiffs of liberties and franchises, shall truly serve and execute process as shall come to their hands from the said justices of peace, afore whom any presentment shall be had for any such annoyance, according to the tenor and effect of the said process to them directed, &c. on pain to make such fine as shall be set on them by the discretion of the said justices."

Five ports
excepted.

Stat. 15. But by 22. Hen. 8. c. 5. f. 6. it is provided, "That nothing in the said act contained shall be prejudicial to the liberties of the five ports, or members of the same."

Stat. 16. And by 22. Hen. 8. c. 5. f. 7. for reformation of annoyances of bridges within the said ports and members, it is further enacted, "That the warden, mayors, and bailiffs elected, and jurats of the same ports, and every of them, have power and authority to enquire, hear, and determine all manner of common annoyances of bridges within the same ports and members, and to make such process, pains, taxations, and all other things within the same ports and members, as the justices of the peace may do in other shires or places out of the same ports, by virtue of the said act in every behalf."

Stat.

Sec. 17. And by 22. Hen. 8. c. 5. f. 8. it is further enacted, "That the said justices, &c. may allow such reasonable costs and charges to the said surveyors and collectors, as by their discretion shall be thought convenient." Allowance to collectors.

Sec. 18. And by 22. Hen. 8. c. 5. f. 9. it is further enacted, "That such part and portion of the highways in every part of this realm, as well within franchise as without, as lie next adjoining to any ends of any bridges within this realm, distant from any of the said ends by the space of three hundred foot, be made, repaired, and amended, as often as need shall require; and that the justices of peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof one to be of the *quorum*, within the limits of their commissions and authorities, may enquire, hear, and determine in their general sessions, all manner of annoyances of and in such highways, so being and lying next adjoining to any ends of bridges within this realm, distant from any one of the ends of such bridges three hundred foot, and to do in every thing concerning the making, repairing, and amending such highways, &c. in as large and ample manner as they might and may do to and for the making, repairing, and amending of bridges, by virtue of the said act." Of roads at the ends of bridges.

In the construction of this statute, the following opinions have been holden.

Sec. 19. FIRST, That no private bridges are within the purview thereof, but only such as are common in the highways, where all the king's liege people have or may have passage. 2 Inst. 701.
Salk. 359.
6. Mod. 255.
256.

Sec. 20. SECONDLY, That unless the justices of the peace of a county, or town, &c. be four in number, and one of them of the *quorum*, they have no manner of jurisdiction by virtue of this statute. 2. Inst. 702.
702.

Sec. 21. But it is said, that the justices of the peace of the county in which such town, being not a county of itself, and wanting such a number of justices, shall lie, may, by virtue of the first clause of the statute, determine all annoyances of bridges within such town, &c. if it be known what persons in certain are bound to repair the same: but if it be not known, it seems that such annoyances are left to the remedy of the common law, because the clause, which in such case authorises the justices of the peace to tax all the inhabitants, seems expressly to confine the power of taxing the inhabitants of such towns to their own justice, &c.

1. Inf. 703.

Sec. 22. THIRDLY, That all householders dwelling in any county or town, &c. whether they occupy any lands or not; and also all persons who have lands in their own possession or manurance, whether they dwell in the same county, &c. or not; and also all bodies politick, either residing in, or having lands in their own hands in a county, &c. are liable to be taxed as inhabitants, within the meaning of the statute.

1. Inf. 704.
Vide 1. Keb.
91.

Sec. 23. FOURTHLY, That the taxation to be made in pursuance of the statute ought to be assessed distinctly on each inhabitant, and not on a whole hundred, parish, or town in general.

2. Inf. 704.

Sec. 24. FIFTHLY, That all privileges of exemptions and discharges from contribution to the repairs of decayed bridges, whether such exemptions were originally derived from charter or act of parliament, or any other foundation whatsoever, are taken away by the express words of the statute, "That the justices, &c. shall tax and set every inhabitant."

1. Keble, 63.

Sec. 25. It hath been questioned, whether a borough which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge.

¶ Vide the next section, where the charges are directed to be paid out of the county rate.

Moore. 103.
2. Hale 181.

† *Sec. 26.* And by 1. Anne, st. 1. c. 18. to prevent more money being raised than is necessary, and to direct the application of what is raised, it is enacted, "That the justices in sessions shall have full power, upon due presentment to them made that any bridge within their respective jurisdictions is out of repair, and which by them hath usually been or ought to have been repaired, to assess every town, parish, or place, within their respective contributions, in the usual proportions toward the repair of bridges, to be levied and collected by the constables, or by such other person or persons as the said justices in sessions shall direct, and paid by the said collectors to the high constables of every hundred, in six days after they shall have received the same, and the high constables shall in ten days after the receipt thereof pay the same to such person as the said justices shall, in sessions, appoint to be treasurers of the same (allowing the said persons not exceeding three-pence in the pound), to be employed and accounted for according to the orders and directions of the said justices for and towards the amending of such decayed bridges, and the highways at the end of such bridges, as need shall require, which assessments shall be levied by distress within ten days after demand;

“demand; and every constable or other person who shall neglect to assess, collect, or pay the money as aforesaid, shall forfeit forty shillings, and every treasurer that shall pay any money but by the order of the justices as aforesaid, shall forfeit five pounds; and all fines, issues, penalties, or forfeitures, upon any presentment or indictment for not repairing, &c. shall be paid into the hands of the treasurer for the purposes aforesaid, and not into the exchequer. And all questions concerning the repairs aforesaid, shall be determined in the same county wherein they lie, and no presentment or indictment shall be removed by *certiorari* (a) out of the county into any other court, except the right of repairing by private persons (or by 5. and 6. Will. & Mary, c. 11. the right between parishes) came in question, and on which question inhabitants are admissible witnesses. The general issue may be pleaded, and this act, and the 22. Hen. 8. may be given, with any special matter in evidence, and the plaintiff shall be liable to pay double costs.”

(a) A *certiorari* lies upon an order of justices concerning a private bridge, pursuant to a private statute; but they ought to return the act

upon which their order is founded. Dalt. 504. And it has been determined, that this act of Queen Anne extends only to bridges where the county is charged to repairs, and that where a private person or parish is charged, the 5. and 6. Will. 3. c. 11. hath allowed the granting a *certiorari*. Strange 900.

† Sect. 27. It is also enacted by 12. Geo. 2. c. 29. s. 13. The expence of repairing bridges to be raised by a county rate. for the more easy assessing, levying, and collecting the county rates, “That no part of the money to be raised and collected in pursuance of this act shall be applied to the repairs of any bridges, &c. until presentments be made by the respective grand juries, at the assize, great sessions, general gaol delivery, or general or quarter sessions of the peace, held for the county or place, of the insufficiency, inconvenience, or want of reparation of their bridges, &c. &c.”

† Sect. 28. Also it is further enacted, s. 14. “That Justices may contract for other works, are required to be repaired at the expence of the repair of bridges. any county or place, the justices of the peace at their grand or quarter sessions respectively, or the greater part of them, then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks, or cepts, may contract and agree with any person or persons for rebuilding, repairing, and amending the same, and all other works which are to be repaired and done by assessment in the respective counties or places, for any term or terms of years not exceeding seven years at a certain annual sum, payment or allowance for the same; such contractor or

“con-

"contractors giving sufficient security for the due performance thereof to the clerk of the peace or other officer of the place respectively; and such justices at their respective general or quarter sessions, shall give public notice of their intention of contracting as aforesaid; and such contracts shall be made at the most reasonable price proposed; and all contracts when agreed to, and all orders relating thereto shall be entered in a book to be kept by the clerk of the peace or other officer respectively for that purpose, and kept among the records of the place, to be from time to time inspected by any of the said justices within the limits of their commissions, and by any person or persons employed concerning the same without fee or reward."

Justices may purchase the adjoining land to rebuild.

† *Stat.* 29. It is also further enacted by 14. Geo. 2. c. 33. "That the justices of the peace of any county or place, at their general sessions or general quarter-sessions assembled, or the major part of them, shall have power to purchase of, or agree, or contract with any person or persons, bodies politick or corporate, for any piece or parcel of land adjoining or near to any county bridge within the limits of their respective commissions, for the more commodious enlarging, or convenient rebuilding of the same; which pieces or parcel of land shall not exceed one acre in the whole for any such bridge, and shall from time to time be paid for by the respective county treasurers out of any monies raised or to be raised by virtue of 12. Geo. 2. c. 29, such treasurers being thereunto authorized by orders under the hands and seals of the justices at sessions, or the major part of them; which lands so purchased shall be conveyed as the said justices in sessions shall appoint, in trust, for the uses and purposes of enlarging or rebuilding such bridges respectively."

Rex v. Justices of Glamorganshire, 5. Term Rep. 279.

† *Stat.* 30. It hath been determined, that if the justices at sessions appoint a committee of twelve magistrates to inspect the state of a county bridge, and to make any new contract for repairing or rebuilding, to be executed by the clerk of the peace, on behalf of the county, and they afterwards make an order, adopting the contract for the rebuilding proposed by the committee, which order is executed by the clerk, and confirmed by the justices at a subsequent sessions, the acts of the committee are the acts of the sessions, and the authority given to the committee and exercised by them is good.

PUBLIC HOUSES.

(*) Palm. 374. 2. Roll. 345. 346. 8. Co. Caley's cafe. Blackerby 169. Cro. Eng. 623. Brownlow 254. Keilw. 50. 11. and 12. Will. 3. c. 15. f. 2. 1. Salk. 188. Moor 877. 12. Mod. 255. Clayt. 97. Godbolt 346. Carth. 150. Shower 282.

(a) Palm.
374.
2. Roll. 345.
(b) Sum. 146.
Cro. Car. 549.
Dalton c. 7.
(c) Sum. 146.
(d) 2. Hale
174.
Dalt. c. 7.
Palm. 374.
2. Roll. 345.
(e) Palm. 374.
2. Roll. 345.
(f) 10 H. 7.8.
9. H. 6. 18,
19.
9. Coke 87.
(g) Dy. 128.
B Ac. fur
Caf 76. 92.
(h) H. P. C.
146.
Dalton c. 7.
(i) 5. E. 4. 2.
69. Cro. Eliz.
1: Salk. 128.
Shower 228.
328.

(a) 2. Roll. Ab.
84, 85.

Sect. 3. It seems to have been always clearly (a) agreed, that he who has an inn by prescription, may lawfully enlarge it upon the same land which has been used with it, either by erecting new buildings thereon, or turning stables into chambers of entertainment, and that he shall have the same privilege in such new parts of his house as in any of the old.

(b) 2. Roll. A.

84.
Salk. 45.

2. Roll. 345.

Palm. 367, 374.

2. Keb. 506.

1. Bulf. 109.

Salk. 45.

Blackerby

170.

Godbolt 345.

Hutton 100.

Cro. Jac. 528.

Dalton 56.

133, 204.

2. Burrow 22.

Sect. 4. Also it seems to be (b) settled at this day, that any person may lawfully set up a new inn, unless it be inconvenient to the publick in some of the respects taken notice of in the first section, and that he has no need of any licence from the king for this purpose, for the keeping of an inn is no franchise, but a lawful trade, open to every subject. But if an inn degenerate into an alehouse, by suffering disorderly tippling, it shall be deemed as such.

Sect. 5. But it is said by DALTON, that innkeepers ought to have licence, and be bound by recognizance, for keeping good order, as alehouse-keepers are.

Sect. 6. And by the commission of the peace, two justices, one whereof shall be of the *quorum*, may inquire of innholders, and of all and singular other persons, who shall offend in the abuse of weights and measures, or in the sale of victuals, against the form of the ordinances in that behalf made.

Vide F. N. B.

172.

Register 184.

Raft. 686.

As to THE SECOND POINT, *viz.* In what manner nuisances of this kind are prevented and restrained by statute, I shall consider,

1. By whom public houses are to be licensed.
2. At what time the licence is to be granted.
3. In what manner the licensing day shall be appointed.
4. In what manner licences shall be granted in cities and corporations.
5. The manner of obtaining a licence for a new house.
6. The manner of continuing a licence to an old house.
7. What persons must take out licences.
8. In what manner the recognizance shall be taken.

9. Of the forfeiture of the recognizance.
10. Of suppressing an unlicensed house.
11. Of the penalties of selling without licence.
12. Of extortion in public houses.
13. Of publicans suffering tippling and drunkenness.

I. As to the first particular, *viz.* By whom public houses are to be licensed.

† *Sect. 7.* By 5. and 6. Edw. 6. c. 25. f. 1. 6. and 26. Geo. 2. c. 31. "None shall be admitted or suffered to keep any common alehouse or tippling-house, except in fairs, but such as shall be allowed in the open sessions, or by two justices of peace, whereof one to be of the *quorum*."

And upon these clauses the following constructions have been made.

† *Sect. 8.* FIRST, that the exception respecting fairs is made from the necessity of accommodating the persons who resort to them, and therefore it seems only to allow the unlicensed sale in the place where the common fair is held, and not in any private house which may be within the limits of the town where such fair is kept, especially where there are licensed alehouses sufficient: and those who shall brew such ale or beer, to be sold by them in fairs, must take care to give notice to the gaugers, that the same may be surveyed; for though they are exempted from taking out a licence, they must pay the duties of excise.

† *Sect. 9.* SECONDLY, That houses at public watering-places, where they take in lodgers and boarders, coming to use the waters during the season, and dress their victuals, and supply them with ale, beer, and other liquors, and entertain their horses, at so much a-day, but sell to no other persons, are not such public houses as require to be licensed." Parker v. Flint, 12. Mod. 254.

† *Sect. 10.* But by 26. Geo. 2. c. 13. f. 11. "No justice of the peace, being a common brewer of ale or beer, inn-keeper or distiller, or a feller of or dealer in ale or spirituous liquors, or interested in any of the said trades, or being a victualler or maltster, shall be capable, or have any power to grant licences for selling ale or beer, or any other liquors, but the same shall be void." No justice who deals in malt or spirituous liquors shall interfere in granting licences.

As

As to the second particular, At what time such licence shall be granted.

The manner
and time of
granting li-
cences.

† *Stat. 11.* By 2. Geo. 2. c. 28. f. 11. it is recited, "That many inconveniences have arisen from persons being licensed to keep inns and common alehouses by justices of the peace, who, living remote from the places of abode of such persons, may not be truly informed as to the occasion or want of such inns or common alehouses, or the characters of the persons applying for licence to keep the same;" it is therefore enacted by the 26. Geo. 2. c. 31. f. 4. "That no licences for the purposes aforesaid shall be granted but on the *first day of September* yearly, or within twenty days after; and that such licence shall be made for one year only, to commence on the *twenty-ninth day of the said September.*"

12. Mod. 254.

2. Sess. Ca.
183.
Andrews 81.

† *S. 12.* It is not necessary to set forth specially in the licence that it was granted at a general meeting of the justices holden for the division; and therefore a conviction for keeping an alehouse without such licence, is not good upon the evidence of the licence only, but there must be other evidence.

As to the third particular, *viz.* In what manner the *licensing day* shall be appointed.

For the penal-
ties of wrong
licences with-
out being le-
gally stamped,
vide 1. Ann.
f. 2 c. 22 f. 6.
3. Ann. c. 23.
6. Geo. 1. c.
23. f. 56. 20.
Geo. 2. c. 12.
f. 20.

† *Stat. 13.* And by 26. Geo. 2. c. 31. f. 4. "The day and place for granting such licences shall be appointed by two or more of the justices acting for the division (where the person to be licensed dwells), by a warrant under their hands and seals at least ten days before such meeting, directed to the high constable or high constables of the said division, requiring him or them to order his or their respective petty constables or other peace-officers to give notice to the several inn keepers and alehouse-keepers within their respective constablewicks of the day and place of such meeting; and all licences hereafter granted at any other time or place shall be null and void to all intents and purposes whatsoever."

In Middlesex
and Surrey,
the justices at
the general li-
censing meet-
ings to appoint
special ones,
&c.

† *S. 14.* By 32. Geo. 3. c. 59. f. 2. it is provided, "That in the respective counties of *Middlesex* and *Surrey*, the justices assembled at the general licensing meetings holden for the respective divisions within the same, shall have full power and authority, and they are hereby directed and required to appoint not less than six, nor more than eight special days of meeting at different equal periods,

“ holden as near as may be, in each year next ensuing such general licensing meetings, on which days it shall and may be lawful for two or more justices acting in and for the said divisions to meet, and to grant or continue licences in the cases and in the manner and for the time herein-before mentioned, and the justices assembled at the said general licensing meetings are hereby directed and required to cause due notice to be given of the times and places at which such special meetings shall respectively be holden.”

As to the fourth particular, *viz.* In what manner licences shall be granted in cities and corporations.

† *Sect. 15.* By 26. Geo. 2. c. 31. s. 16. it is provided, “ That nothing contained in this statute shall extend, or be construed to extend, to alter *the time* or times of granting such licences for keeping of common inns or alehouses in any city or town-corporate.”

† *Sect. 16.* It has been decided, that this provision of the statute does not exempt cities and towns-corporate from the operation of the other parts of the statute, but that city and corporation magistrates must give the same notice of their meeting to grant licences, as justices for a county give. Rex v. Downe, 3 Term Rep. 560.

† *Sect. 17.* It hath also been decided, That where two sets of magistrates have a concurrent jurisdiction, and one appoints a meeting to grant ale licences, their jurisdiction attaches so as to exclude the other appointing a subsequent meeting, though they may all meet together the first day, and if after such appointment the other set of magistrates meet on a subsequent day, and grant other licences, their proceeding is illegal, and the subject of an indictment. Rex v. Smith & Bury, 4 Term Rep. 451.

As to the fifth particular, *viz.* The manner of obtaining a licence for a new house.

† *Sect. 18.* By 26 Geo. 2. c. 31. s. 2. it is enacted, for the better preventing disorders in alehouses, “ That no licence shall be granted to any person not licensed the year preceding, unless such person produce at the general meeting of the justices in *September*, a certificate under the hands of the parson, vicar, or curate, and the major part of the churchwardens and overseers, or else of three or four reputable and substantial householders and inhabitants of the parish or place where such alehouse is to be, “ be, 1. Burr, 558.

"be, setting forth that such person is of good fame, and of sober life and conversation; and it shall be mentioned in such licence that such certificate was produced, otherwise such licence shall be null and void."

Sec 32. Geo. 3. c. 59. f. 5. ^{† Sect. 10.} But by 26. Geo. 2. c. 31. f. 16. it is provided, "That nothing herein contained shall extend, or be construed to extend, to oblige persons not licensed the year preceding to produce certificates in any city or town-corporate."

Rex v. Young, 1. Burr. 556. ^{† Sect. 20.} It is said, that a certificate being signed by three or four reputable and substantial householders without the minister and churchwardens, is sufficient.

^{† Sect. 21.} It seems agreed, that although a certificate is not necessary in cities and towns-corporate, yet the magistrates may exercise their discretion with respect to the propriety of granting or refusing a licence, and therefore a *mandamus* will not lie to compel the allowance of a licence.

Rex v. Downes, 3. Term Rep. 660. ^{† Sect. 22.} But it seems not to be settled whether *Westminster* is a city within the meaning of this act.

Rex v. Young and Pitts, 1. Burr. 556. ^{† Sect. 23.} It is agreed, that the justices are not obliged to disclose the reasons which induce them to grant or refuse a licence.

Rex v. Athay, 1. Burr. 653. ^{† Sect. 24.} But if this discretion with which they are entrusted be not exercised in a fair and honest way, but perverted to sinister or corrupt purposes, as if they refuse to grant licences to those alehouse-keepers who voted against their recommendation of candidates for members of parliament (a), or from motives of private resentment (b), the Court will grant a criminal information.

Rex v. Holland, 1. Term Rep. 692. ^{† Sect. 25.} It is also settled, that an information lies against justices as well for granting as for refusing to grant a licence from corrupt motives.

As to the sixth particular, viz. The manner of continuing a licence to an old house.

If alehouse-keepers die or remove, &c. before the expiration of their licences, new ones may be granted to executors or new tenants, till the next licensing day, on certain conditions.

"to

" to die before the expiration of such licence, or if any
 " person so licensed, or the executors, administrators, or
 " assigns, of any person dying so licensed, shall remove
 " from, or yield up the possession of such house in which
 " such ale, beer, or other liquors shall, by virtue of such
 " licence, be sold, and shall assign such licence, or in case
 " any such house shall become empty or unoccupied, the
 " late occupier whereof was duly licensed at the last general
 " licensing day in *September*, previous to the time such
 " house became empty or unoccupied, then and in every
 " such case (except as herein is otherwise provided) it shall
 " and may be lawful for two or more of his majesty's
 " justices of the peace for the county, riding, division, or
 " place, at a petty sessions to be holden within and for the
 " same division in which such house shall be situate, to
 " grant a licence to the executors, administrators, or assigns
 " of the person so dying, who shall be possessed of such
 " house, or to any new tenant or occupier, upon such re-
 " moval, or the house becoming empty or unoccupied as
 " aforesaid, to open or continue open such house as an ale-
 " house or victualling-house, and to sell ale, beer, and other
 " liquors aforesaid there till the next general licensing day,
 " so as the said licence be stamped as by the aforesaid statutes
 " in that behalf is directed; or for the said justices, in their
 " discretion, to allow to such executors or administrators,
 " or other persons aforesaid, possessed of any such licence,
 " to continue open such house for the purpose aforesaid,
 " under and by virtue of such licence, until the expiration
 " thereof, every such executor, administrator, or assign,
 " and every such tenant or occupier, respectively, in every
 " such case, obtaining, within thirty days after such death
 " or removal, or after his or her entering upon the pos-
 " session of such house, and producing to the said justices
 " such certificate, and entering personally into such recog-
 " nizance, with such sureties as is directed by the said in-
 " part recited act of the twenty-sixth year of his said late
 " majesty, in respect to persons to whom licences are to be
 " granted by virtue of the said act; which said certificate
 " and recognizance, with the condition thereof fairly written
 " or printed, and attested by the justices granting or allow-
 " ing such licence, shall forthwith, or at the next general
 " or quarter sessions of the peace at farthest, after granting
 " such licences, be sent or returned to the clerks of the
 " peace, to be by them, or other persons acting as such,
 " duly entered or filed amongst the records of the sessions of
 " of the peace."

Certificates
 and recogni-
 zances re-
 quired by this
 act to be sent
 to the clerk
 of the peace
 or other person
 acting as such,
 to be entered
 or filed amongst
 the records of
 the sessions of
 the peace.

† *Sec. 27.* By 32. Geo. 3. c. 59. f. 3. it is further enacted, "That if any person so licensed as aforesaid, within the said counties of *Middlesex* and *Surrey*, or the executors, administrators, or assigns, of any person dying so licensed, shall remove from such house, or yield up the possession thereof in manner aforesaid, or in case any such house, within the respective counties aforesaid, shall be or become empty or unoccupied, in manner aforesaid, then and in every such case, before such licence shall be continued, or a new licence granted to open or continue open any such house as an alehouse, inn, or victualling-house, the person or persons so succeeding as the occupier or occupiers thereof shall appear at the next special meeting to be holden for the division wherein such house shall be situated; and the justices assembled at such special meeting shall and may (upon such certificate being produced to them, and such recognizance being entered into as is hereinbefore mentioned) grant a licence to such new tenant or occupier, or in their discretion allow a continuance of any licence before granted, in manner aforesaid, to open or continue open such house as an alehouse, inn, or victualling-house, and to sell ale, beer, and other exciseable liquors there, until the next general licensing day; any thing in the act contained to the contrary thereof notwithstanding."

No new licences to be granted at petty sessions in houses not licensed at the general licensing day.

† *Sec. 28.* By 32. Geo. 3. c. 59. f. 4. it is enacted, "That nothing in this act contained shall extend, or be construed to extend, to empower any justices of the peace at any petty sessions to grant any new licence to any house, the occupier whereof was not duly licensed at the general licensing day next before such petty sessions as aforesaid."

The times of granting licences not hereby altered.

† *Sec. 29.* By 32. Geo. 3. c. 29. f. 5. it is further enacted, "That nothing herein contained shall extend, or be construed to extend, to alter the time or times of granting licences for keeping of common inns or alehouses, or to oblige persons not licensed the year preceding to produce certificates in the city of *London*."

Persons entering into licensed houses authorized and empowered to do by the justices at the petty sessions next ensuing after the expiration of such thirty days, in the manner hereinbefore directed, shall

† *Sec. 30.* By 32. Geo. 3. c. 59. f. 6. it is further enacted, "That every person so entering into the possession of any licensed alehouse, inn, or victualling-house, who shall sell any ale, beer, or other exciseable liquors, unless authorized and empowered so to do by the justices at the petty sessions next ensuing after the expiration of such thirty days, in the manner hereinbefore directed, shall

" from thence be liable to all the penalties, punishments, and forfeitures, to which persons selling ale, beer, or other liquors, by retail, without a licence, are subject by an act passed in the fifth year of the reign of his present Majesty, intituled, *An act for altering the stamp duties upon admissions into corporations or companies, and for further securing and improving the stamp duties in Great Britain*; any law, statute, or usage, to the contrary notwithstanding."

† *Secl.* 31. By 32. Geo. 3. c. 59. s. 7. it is further enacted, " That the certificate heretofore directed to be obtained by the person or persons requiring to be licensed shall, after the obtaining thereof, be an indemnity to him, her, or them, for selling any beer, ale, or other exciseable liquors, till after such petty sessions shall have been held."

Persons obtaining the necessary certificate indemnified till the petty sessions.

† *Secl.* 32. By 32. Geo. 3. c. 59. s. 8. it is further enacted, " That in all cases where the continuance of a licence shall be allowed, or a new licence shall be granted as aforesaid, by the justices at any petty sessions, the clerk of the peace for the county, riding, division, or place, where the house is situate, shall record the same, and shall be paid the sum of one shilling for recording the allowing or granting of every such licence, and no more."

Clerk of the peace to record the continuance of licences, &c.

As to the seventh particular, *viz.* What persons must take out licences.

† *Secl.* 33. By 5. and 6. Edw. 6. c. 25. s. 1. 6. and 26. Geo. 2. c. 31. " None shall be admitted or suffered to keep any common alehouse or tippling-house, except in fairs, but such as shall be allowed in the open sessions, or by two justices of peace, whereof one to be of the *quorum*."

No persons shall keep public house without licence.

† *Secl.* 34. By 2. Geo. 2. c. 28. s. 10. " No person or person whatsoever shall sell brandy or other distilled liquors by retail, to be drank in his, her, or their house or houses, but such persons only as shall be thereunto licensed, in the same manner, and liable to the same laws, as common alehouse-keepers."

Sellers of spirituous liquors must be licensed.

† *Secl.* 35. By 10. Geo. 2. c. 19. s. 10, 11. " No person or persons shall be enabled to sell made wines, to be drank in his, her, or their house or houses, unless first licensed by two justices of the county or place where the same are sold; and no such licence shall be granted but to persons who shall keep public victualling-houses, inns, coffee-houses, or alehouses."

Sellers of wine must be licensed from the stamp-duty on wine 2. Geo. 2. c. 19. licence vide

Sellers of
strong waters
&c. must be
licensed.

(1.) Vide
Burn 11.
for an obser-
vation on the
double licence
required for
retailing small
liquors, and
distillers li-
quors, and the
attempt made
by the excise
office to keep
their jurisdic-
tion distinct
from the jus-
tices.

† Sect. 36. By 16 Geo. 2. c. 3. f. 8. " No person shall
" presume to retail any brandy, rum, arrack, usquebaugh,
" geneva, aquavite, or any other distilled spirituous liquors,
" or strong waters mixed or unmixed, by whatever name
" they may be called, publicly or privately, without first
" taking out a licence (1.) for that purpose, within ten
" days at least before they shall retail the same, and for
" which they shall pay twenty shillings; which licence, if
" taken out within the bills of mortality, shall be under the
" hands and seals of two of the commissioners of excise, &c.
" But if taken out without the limits aforesaid, then such
" licence shall be executed under the hands and seals of the
" several collectors and supervisors of excise within their
" respective districts; and a fresh licence shall be taken out
" ten days at the least before the expiration of the twelve
" months after the taking out of the first licence, and in the
" same manner to renew such licence from year to year, on
" pain of ten pounds, or two months hard labour, until
" paid, on conviction by one justice. And by 24 Geo. 2.
" c. 40. f. 11. and 26 Geo. 2. c. 13. f. 8. it shall in no case
" be mitigated below five pounds. And by 29 Geo. 2.
" c. 12. f. 22. such person shall be first licensed to sell ale
" or spirituous liquors, by two or more justices of the peace.
" For by 2 Geo. 2. c. 28. f. 10. justices of the peace and other
" officers shall have the same jurisdiction over such retailers
" of spirituous liquors as they have over alehouse-keepers."

Sellers of less
than two gal-
lons to be
deemed re-
tailers.

Vide 17 Geo.
2. c. 26. f. 1.
where clandestine
sellers are deemed
retailers; and
o. Geo. 2. c. 27.
f. 16. where giving
liquors to servants,
or apprentices
fetching goods
from shops, is
deemed retailing.

† Sect. 37. By 17 Geo. 2. c. 17. f. 22. " Every person
" who shall retail spirituous liquors mixed or unmixed, to
" be drank in any quantity whatsoever, in any place to him
" belonging, or shall retail, or send the same abroad in less
" than two gallons, shall be deemed a retailer."

† Sect. 38. And by 17 Geo. 2. c. 17. f. 19. " No such
" licence shall be granted, except to such persons only who
" keep taverns, victualling-houses, inns, coffee-houses, or
" alehouses; and all other licences shall be void; and if
" any licensed person shall exercise the trade of a distiller,
" grocer, or chandler, or keep a brandy shop for sale of
" spirituous liquors, the licence shall be void."

To whom
of public
house-keepers
licences shall
be only granted.

† Sect. 39. By 24 Geo. 2. c. 40. f. 12. and 26 Geo. 2.
c. 13. f. 9. " No licence shall be granted within the limits
" of the head office of excise in London, but to such as

" occupy

“ occupy tenements of ten pounds a-year, and pay parish-rates for the same, or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent of twelve pounds a-year, and not otherwise, nor to persons in any other part of the kingdom but ~~for~~ as pay to the church and poor: and no licence shall be of any avail longer than he shall be so qualified.”

† *Stat.* 40. By 29. Geo. 2. c. 12. s. 26. “ Every person who shall retail ale, beer, or other liquors, in any prison or house of correction, or workhouse, shall be deemed keepers of common alehouses and tippling-houses, unless they shall obtain a licence according to law.” Prison-keepers selling liquors deemed alehouse-keepers.

† *Stat.* 41. By 29. Geo. 2. c. 29. s. 22. “ Neither the commissioners of excise, or any of the collectors or super-visors, or any other officers appointed to deliver licences to the retailers of any spirituous liquors or strong waters, shall grant or deliver any such licence to any person who shall not produce a licence, granted to him by justices of the peace to sell ale, beer, and other exciseable liquors, and stamped according to 9. Anne, c. 23.” Sellers of spirituous liquors must have ale licences also.

† *Stat.* 42. By 3^d Geo. 3. c. 59. s. 9. “ It shall not be lawful for any person or persons whatever, in any county, riding, city, borough, town-corporate, or place, in Great Britain, by virtue of any licence or licences granted or to be granted by any of the commissioners, or officers of excise, for the sale of foreign wines, or *British-made* wines, or sweets, by retail, to sell the same by retail, to be drank in his, her, or their house or houses, or place thereto adjoining or belonging, except such person and persons only to whom a licence shall have been granted, by justices of the peace, or other officers, to sell ale, beer, and other liquors, in the same house or houses respectively, and the several justices of the peace, and all other officers, in and throughout the kingdom of *Great Britain*, shall be, and are hereby impowered and authorized to have and exercise the same jurisdictions, powers, and authorities, over such retailers of foreign or *British-made* wines or sweets, who shall sell the same to be drank in his, her, or their house or houses, or place thereto adjoining or belonging, as aforesaid, as they now have or exercise, or are entitled to have or exercise, over persons licensed to sell ale, beer, and other liquors, by any statute whatsoever, and if any person or persons shall sell or cause to be sold by retail as aforesaid, any foreign or *British-made* wines or sweets, to be drank in his, her, or their

No person to sell wine by retail, to be drawn in his house, without having a beer licence.
Penalty for selling wine by retail, without having a beer licence.

"their house or houses, or place thereto adjoining or
 "belonging, without having a licence to sell ale, beer, and
 "other liquors in the same house or place, every such person
 "or persons shall severally and respectively forfeit and pay
 "for every such offence the like penalty and penalties as
 "are inflicted on persons for selling ale, beer, or other
 "exciseable liquors, without a licence, by an act made in
 "the fifth year of the reign of his present majesty, intituled,
 "1 Geo. 3. c. 46. "An act for altering the stamp duties upon admissions into cor-
 "porations or companies; and for securing and improving the
 "stamp duties in Great Britain; to be adjudged, recovered,
 "levied, certified, and applied in such and the like manner,
 "and under the like terms; and with the like powers and
 "authorities, as the several penalties inflicted by the said
 "act are hereby, or by any other act or acts of parliament
 "relating thereto, directed to be adjudged, recovered, levied,
 "certified, and applied."

† *Self. 43.* By 32. Geo. 3. c. 59. s. 10. it is further
 enacted, "That if any person or persons shall at any time
 "be sued, molested, or prosecuted, for any thing by him
 "or them done or executed in pursuance of this act, or of
 "any clause, matter, or thing herein contained, such per-
 "son or persons shall or may plead the general issue, and
 "give the special matter in evidence for his or their defence;
 "and if upon the trial a verdict shall be passed for the
 "defendant or defendants, or the plaintiff or plaintiffs
 "become nonsuited, then such defendant shall have treble
 "costs awarded to him or them against such plaintiff or
 "plaintiffs."

† *Self. 44.* "By 32. Geo. 3. c. 59. s. 11. it is further
 enacted, "That nothing in this act contained shall extend,
 "or be construed to extend, to any person who shall be a
 "master, warden, freeman, or one of the commonalty of
 "the Vintners of the city of London; or to any person who
 "shall be licensed by the chancellors or vice-chancellors of
 "the two universities, in that part of Great Britain called
 "England, or either of them; or to any person who shall
 "keep one of the three several wine taverns within the
 "borough of St. Albans, in the county of Hertford, licensed
 "by the mayor and burgesses thereof, according to the tenor
 "of certain letters patent granted by queen Elizabeth and
 "king James the First, for and towards the maintenance of
 "the free-school there: provided nevertheless, that no per-
 "son who, from and after the said tenth day of October one
 "thousand seven hundred and ninety-two, shall be admitted
 "to the freedom of the said company of vintners of the city
 "of London, by redemption only, shall be exempted from
 "the

1 Geo. 3. c. 46.

General issue.

Treble costs.

Not to extend
 to the Vint-
 ners Compa-
 ny, &c.

Members of
 the Vintners
 Company by
 redemption,
 after Oct. 10,
 1792, not ex-
 empted from
 the act.

" the obligation of obtaining a licence to retail ale, beer, and other liquors, to be granted in manner aforesaid, but that the freemen only of the said company, who have been already admitted to their freedom, or who, from and after the said tenth day of October one thousand seven hundred and ninety-two, shall be admitted to their freedom in right of patrimony, or apprenticeship, shall be entitled to such exemption."

† *Sect. 45.* It hath been determined, that a person who sells spirituous liquors by retail without a licence from two justices of the peace, is liable to the penalties of 5. Geo. 3. c. 46. though he has a licence from the commissioners of the excise to retail spirituous liquors. Rex v. Darnley, 1. Term Rep. 560.

As to the eighth particular, viz. How the recognizance shall be taken.

† *Sect. 46.* And by 26. Geo. 2. c. 31. f. it is also enacted by the said statute, " That upon granting licences by justices of the peace to any person to keep an alehouse, inn, victualling-house, or to sell ale, beer, and other liquors by retail, every such person shall enter into a recognizance to the king in the sum of ten pounds, with two sufficient sureties each in the sum of five pounds, or one sufficient surety in the sum of ten pounds, under the usual condition for maintenance of good order and rule within the same, and in case the person applying for such licence shall be hindered through sickness or infirmity, or any other reasonable cause to be allowed by the said justices, to attend in person at the meeting of the same justices for granting the said licences, that it shall be lawful for them to grant such licence upon two sufficient sureties entering into such recognizance, each in the penalty of ten pounds, for performance of the condition of the said recognizance." The justices on granting licences shall take a recognizance.

† *Sect. 47.* And it is further enacted by 26. Geo. 2. c. 31. f. 4. " That the said recognizance, with the condition thereof, fairly written or printed, shall forthwith, or at the next general or quarter-sessions of the peace at farthest, after granting such licences, be sent or returned to the clerks of the peace, or persons acting as such, for every county, riding, city, liberty, or town-corporate in England, wherein such licences shall be granted, under the hands of the justices of peace, before whom such recognizances were taken, to be by the said clerks of the peace, or such other person acting as such, duly entered or filed amongst the records of the sessions of the peace; and for every such licence granted" The clerk of the peace to return the recognizance to the sessions.

" granted without taking such recognizance, and for every
 " such recognizance taken and not sent or returned as
 " aforesaid, every justice of the peace signing such licence
 " shall forfeit three pounds six shillings and eight-pence ;
 " and by sect. 6. the forfeiture for granting licences without
 " taking recognizances shall be together with costs to him
 " who shall sue."

Of which they
 shall deliver
 an account to
 the justices at
 their yearly
 meetings.

+ Sect. 48. By 26. Geo. 2. c. 31. s. 5. " The clerks of
 " the peace shall keep a register or calendar of all the recog-
 " nizances so sent or returned, and shall deliver to the
 " justices at their general meetings in *September*, every year,
 " for granting licences in each division, or place a true
 " copy of such register or calendar, and that for every
 " recognizance there shall be paid to the justices clerk,
 " taking such recognizances, to the clerk of the peace, as a
 " fee for recording, and for making and delivering copies as
 " aforesaid, one shilling, and no more, by the person
 " licensed, over and above the fees payable to the said jus-
 " tices clerks."

As to the ninth particular, viz. The forfeiture of the
 recognizance.

The justices
 may suppress
 by order,
 without either
 information
 or conviction,
 or shewing
 cause. For
 conviction is
 only necessary
 where the pe-
 nalty is pre-
 ceeded for,
 which ought
 to be by *scire*
fac &c. *Ld.*
Ray. 1303.
 1405.

+ Sect. 49. By 5. and 6. Edw. 6. c. 25. s. 3. " The jus-
 " tices of peace of every shire, city, borough, &c. may at
 " their quarter-sessions by presentment, information, or
 " otherwise by their discretion, inquire of all such persons
 " as shall be allowed to keep any alehouse or tipping-house,
 " and that be bound by recognizance as is aforesaid, if
 " any of them have done any act whereby they have for-
 " feited the same recognizance: and the said justices shall
 " upon every such presentment or information, award
 " process against every such person so presented or com-
 " plained upon before them, to shew why he should not
 " forfeit his recognizance, and may also hear and determine
 " the same by all such ways and means as by their discretion
 " shall be thought good."

Vide *Strange* 631. contra.

Justices may
 take away li-
 cences, unless
 it can be
 shewn that the
 conditions of
 the recogni-
 zance have
 been fulfilled.

+ Sect. 50. By 26. Geo. 2. c. 31. s. 7. " Any justice of
 " the peace of any county, riding, city, liberty, or town-
 " corporate, wherein such licence shall be granted, upon
 " complaint or information that such licensed person hath
 " done or committed any act, offence, or misdemeanor,
 " whereby in the judgment of the same justice such recog-
 " nizance may be forfeited, or the condition thereof broken,
 " may

" may by summons (2) under his hand and seal require
 " such person so complained of or informed against to
 " appear at the next general or quarter sessions of the peace
 " for the said county, riding, city, liberty, or town-cor-
 " porate, then and there to answer to the matter of such
 " complaint or information; and also may bind the person
 " or persons who shall make such complaint or information,
 " or any other person or persons, in a recognizance to
 " appear at such general or quarter session, and give evi-
 " dence against such person so complained of or informed
 " against; and the justices of the peace, in their general or
 " quarter sessions, shall have power to direct the jury which
 " shall attend at such sessions for the trial of traverses or
 " some other jury of twelve honest and substantial men, to
 " be then and there impanelled by the sheriff, without fee
 " or reward, to inquire of the misdemeanor charged in the
 " said complaint or information; and if such jury shall
 " find that the person so complained of or informed against
 " hath done any act whereby the condition of his recogni-
 " zance is broken, such act being specified in such complaint
 " or information, it shall be lawful for the court of session
 " to adjudge such person guilty of the breach of such recogni-
 " zance, which verdict and adjudication shall be final to
 " all intents and purposes, and thereupon the said justices
 " shall order the recognizance, entered into by such offen-
 " der to be estreated into the court of exchequer, to be
 " levied for his majesty's use, and that the said person, the
 " condition of whose recognizance shall be so adjudged to
 " be broken and forfeited, shall, from and after such adjudi-
 " cation, be utterly disabled to sell any ale, beer, cyder,
 " perry, spirituous liquors, or strong waters, for the space
 " of three years, and any licence granted to such person
 " during such term, shall be void and of none effect. But
 " the justices may adjourn the hearing and trial to the then
 " next general or quarter sessions, where the same shall be
 " finally determined."

(2) If the jus-
 tice convicts
 without a
 summons, he
 is liable to an
 information
 for the misde-
 meanor.
 Strang. 678.
 Ld. Ray. 1407.
 Sess. Cases
 553.
 Ld. Ray. 1303.
 Ld. Ray. 1405.

† Sess. 51. By 26. Geo. 2. c. 31. s. 11. " If any person
 " shall be disabled by conviction to sell ale, beer, cyder, or
 " perry, he shall by the same conviction be disabled to sell
 " any spirituous liquors, any licence before obtained for that
 " purpose notwithstanding, and every licence granted to
 " him for selling ale, beer, cyder, perry, or spirituous
 " liquors shall be void, and if he shall sell during such dis-
 " ability he shall be punished, or for selling without licence,
 " and a certificate from the clerk of the peace (which he
 " shall grant without fee) of such conviction shall be legal
 " evidence."

As to the tenth particular, viz. Of suppressing an unlicensed house.

Before this statute it was lawful for any one to keep an alehouse without licence, for it was a means of livelihood which any one a nuisance.

† *Sec. 52.* By 5. and 6. Edw. 6. c. 25. "The justices of peace within every shire, city, borough, town-corporate, franchise, or liberty within this realm, or two of them at the least, whereof one to be of the *quorum*, shall have full power and authority within every shire, city, &c. to remove, discharge, and put away common selling of ale and beer in common alehouses and tippling-houses." was free to follow. But if it was disorderly kept, it was indictable as Salk. 45.

Dakon c. 7.
Hutt. 100.
Sum. 147.
Ld. Ray. 1303.
1405.

† *Sec. 53.* And it seems to have been the general opinion in the construction of this clause, that an alehouse-keeper suppressed in pursuance of it, cannot be afterwards licensed again but in open sessions.

† *Sec. 54.* By 5. and 6. Edw. 6. c. 25. f. 4. "If any person, other than such as shall be allowed by the said justices, shall obstinately, and upon his own authority, take upon him to keep a common alehouse or tippling-house, or shall, contrary to the commandment of the said justices, or two of them, use commonly selling of ale and beer, except in fairs, that then the said justices, or two of them, whereof one to be of the *quorum*, shall for every such offence commit every such person so offending to the common gaol within the said shire, city, borough, &c. there to remain without bail or mainprize by the space of three days; and before his deliverance the said justices shall take his recognizance with two sureties, that he shall not keep any common alehouse, tippling-house, or use commonly selling of ale or beer, as by the discretion of the said justices shall seem convenient."

The excise-man's book to be proof of a person being an alehouse-keeper.

† *Sec. 55.* By 26. Geo. 2. c. 31. f. 9. "Where any justice of the peace shall suspect that any alehouse-keeper, victualler, or retailer, sells ale, beer, cyder, or perry, without such licence, it shall and may be lawful for such justice to call such suspected person before him, and also any excise-officer or gauger to produce before such justice his stock-book, or other account which such officer keeps, of the charge or survey of such suspected person in respect of any of the liquors aforesaid; and likewise to examine such excise-officer or gauger upon oath touching the manner in which such officer surveys or charges such suspected person in respect of any liquors aforesaid, or how or in what manner such suspected person actually pays the duties for any of the said liquors; and if it shall appear

" appear by such stock-book or other account, or by the examination of the said officer or gauger, that such person so suspected of selling any of the liquors aforesaid, is surveyed as a victualler or retailer, and is charged with the same duties that victuallers and retailers are usually charged with, and pay for any of the liquors aforesaid, and is not intitled to the allowance or abatement given to common brewers, then, and in such case such suspected person shall be deemed an alehouse-keeper, victualler, retailer, or seller of any of the liquors aforesaid, to all intents and purposes, as if the same had been proved by two witnesses."

† *Sec. 56.* By 26. Geo. 2. c. 31. s. 10. " If any person shall make information before any one justice, and shew probable cause that he suspects that any person sells ale, beer, or other liquors without a licence from two justices, it shall be lawful for such justice to call such suspected person before him, and also to summon any other person as evidence, to prove the charge against such suspected person; and if such person so summoned shall refuse to appear, or when appearing shall refuse to be examined upon oath, and give evidence as aforesaid, such person or persons shall forfeit the sum of ten pounds, to be levied by distress, &c. for the use of the poor where the offender shall live."

Justices may examine persons suspected not to be licensed.

† *Sec. 57.* It seems that the justice may suppress an unlicensed house at discretion, for no appeal lies on the denial of a licence; and on a commitment of the crime the want of a licence can only come in question, and not the reason why it was denied.

Salk. 46.
Stra. 631.
Ld. Ray. 1303.
1405.

† *Sec. 58.* It is said, that a licensed house can only be suppressed by proceeding on a breach of the recognizance, or by indictment for suffering such disorder as renders the house a nuisance.

Salk. 45-471.

† *Sec. 59.* It is also said, that when a house is suppressed as a nuisance, a new licence may be granted to another man.

Hutt. 100.

As to the eleventh particular, *viz.* Of the penalties for selling ale, beer, or spirituous liquors without licence.

Sec. 60. By 3. Car. 1. c. 3. " If any person shall upon his own authority, not being thereunto lawfully licensed, take upon him to keep a common ale-house or tippling-house, or use commonly selling of ale or beer, cyder or perry, except in fairs, every such person

8. Mod. 175.
Strange 555.
Sess. Cal. 264.

" ten

“son shall for every such offence forfeit twenty shillings
 “to the use of the poor of the parish where such offence
 “shall be committed; the same offence being viewed by
 “any mayor, bailiff, or justice of peace, or other head
 “officer within the several limits, or confessed by the party
 “so offending, or proved by the oath of two witnesses,
 “to be taken before any mayor, bailiff, or other head officer,
 “or any justice of peace, being within the limits of their commission.” (3)

(3) The remainder of this section,

which was recited in the former edition, prescribed the form in which the penalty should be levied; but as this part seems to be virtually repealed by 5. Geo. 3. c. 46. which prescribes the amount and the manner of levying the penalties for this offence, I have omitted to insert it. Vide infra.

Forfeiture for selling in an unlicensed house.

† Sect. 61. And by 4. Jac. 1. c. 4. “If any person shall
 “sell or deliver any beer or ale to any person that shall
 “then sell beer or ale as a common tippler, or alehouse-
 “keeper, the same person not having a licence to sell ale
 “or beer (except it be for the use of his household only),
 “he shall forfeit for every barrel 6s. 8d. and so proportion-
 “ally for other quantities, half to the poor, and half to
 “him that shall sue in sessions by action of debt, informa-
 “tion, indictment, or presentment.”

Punishment on persons selling distilled liquors without licence.

† Sect. 62. And by 24. Geo. 2. c. 40. s. 13. and
 9. Geo. 3. c. 6. “All the distilled liquors that shall be
 “then, or at any time within six months after conviction
 “of such unlicensed person, found in the custody, house,
 “or other place occupied therewith, whether it be in his
 “own occupation or not, shall, by warrant of the said
 “commissioners, or of one justice, be seized and staved, or
 “otherwise destroyed. And if any person shall offend again
 “in like manner, the commissioners or justices before
 “whom he shall be convicted of such subsequent offences,
 “may inflict the penalties by any former law to be inflicted
 “for such offence, and also commit the offender to the
 “house of correction, not exceeding three months.”

The penalty of retailing distilled liquors without a licence, increased.

† Sect. 63. And whereas the aforesaid penalty of ten pounds is sometimes insufficient to deter offenders, it is therefore enacted by 13 Geo. 3. c. 56. “That whoever, for
 “himself, or by any other person for his benefit, shall pre-
 “sume to retail any distilled spirituous liquors, or strong
 “waters, without first taking out a licence for that purpose
 “in the manner before prescribed and directed, shall forfeit
 “fifty pounds for each offence, to be sued for, levied, reco-
 “vered, and mitigated by any law of excise now in force, or
 “by action of debt or information at Westminster, half to
 “the king, half to the prosecutor: but this penalty shall

“no

"not either by the commissioners or justices be reduced below five pounds."

+ *Stat. 64.* But by 29. Geo. 2. c. 12. s. 32. "If any persons so licensed to sell ale, beer, or other exciseable liquors, shall die or remove from the alehouse, or other place wherein such ale, beer, or other liquors, shall, by virtue of such licence, be sold, it shall and may be lawful for the executors, administrators, and assigns of such person so dying or removing, who shall be possessed of such house or place, or the occupier thereof, to sell ale, beer, or other liquors therein, during the residue of the term for which such licence shall have been granted to the person so dying or removing, without any certificate from any justice of the peace, or any new licence to be had and obtained in that behalf, any thing in 26. Geo. 2. or any other law to the contrary notwithstanding."

The representatives of a publican may use the unexpired term of the licence, without the certificate required by 26. Geo. 2. c. 31. Vide ante page 273.

+ *Stat. 65.* By 5. Geo. 3. c. 46. s. 22. it is recited, that by the laws now in force, persons selling ale or beer, or other exciseable liquors by retail, without licence, are liable and subject by different laws to different penalties and punishments, which has occasioned much confusion, and an ill and improper use has been made thereof in many instances: and for the prevention thereof it is enacted, "That every person lawfully convicted of selling ale or beer, or other exciseable liquors by retail, without being duly licensed so to do, shall, for every such offence, forfeit and undergo the several penalties and punishments herein-after mentioned, and provided in that behalf, instead and in lieu of the several pecuniary and corporal punishments which they are now liable or subject to by any law now in force; that is to say, for the first offence the sum of forty shillings, and also the costs and expence of convicting such offender; and in case such sum, together with the charges and expences of convicting such offender, shall not be paid within the space of fourteen days next after such conviction, that then the offender shall suffer imprisonment for one month, unless the said penalty, and the costs, charges, and expences of such conviction shall be sooner paid; for the second offence four pounds, &c. and, if not paid within a week, two months imprisonment; and for the third, and every other offence, the sum of six pounds, &c. and, if not paid in three days, three months imprisonment. All which said costs and expences shall be assessed, settled, and ascertained by the justices of the peace before whom such offenders shall respectively be convicted; and all

All the former penalties upon persons selling liquors without licence for that purpose, made uniform.

"the

“ the penalties, forfeitures, &c. shall go, half to the king,
 “ and the other half to the informer, together with all such
 “ costs, charges, and expences, to be assessed or ascertained
 “ as aforesaid.”

Justices may
 hear and de-
 termine the
 offence.

N. B. The
 number of
 witnesses ne-
 cessary toward
 the conviction
 is not here
 mentioned,
 and therefore
 this seemeth
 to rest as it was
 before, on the
 statute of 3.
 Car. 1. c. 3.
 which directs
 the conviction
 to be on con-
 fession of the
 offender, or
 oath of two
 witnesses. 1.
 Burn, 24.

+ Sect. 66. And by 5. Geo. 3. c. 46. s. 23. “ It shall be
 “ lawful for any one or more justice or justices of the peace
 “ of the county or place to hear and determine the same
 “ offences in a summary way ; which said justice or justices
 “ of the peace are hereby authorised and required, upon
 “ any information exhibited, or complaint made in that
 “ behalf, to or before him or them, to summon the party
 “ or parties accused, and also the witnesses on either side
 “ (if they shall be required to summon any such witnesses),
 “ and upon the appearance or contempt of the party or
 “ parties accused, by not appearing, to proceed to examine
 “ and hear the matter in a summary way ; and also to ex-
 “ amine such witnesses on oath as shall be produced therein,
 “ and to give his or their judgment thereon ; and in case
 “ he or they shall convict the party or parties so accused,
 “ or complained against, of the offence laid to his, her, or
 “ their charge, and such party or parties shall refuse or neg-
 “ lect to pay the penalty or penalties, for which he, she,
 “ or they stand convicted, within the time herein-before
 “ mentioned for that purpose, together with the costs of
 “ such conviction or convictions, to be assessed, settled,
 “ and ascertained as aforesaid ; that then it shall be lawful
 “ for every such justice and justices to issue a warrant under
 “ their hands and seals, for the apprehending and com-
 “ mitting to prison any such offender, for such time and in
 “ such manner, as the nature of the offence shall require,
 “ according to the true intent and meaning of this act.”

Penalty on
 witnesses not
 obeying sum-
 mons.

N. B. This pe-
 nalty is but
 small, and
 might defeat
 the intention
 of the act ; for
 by the witness
 paying 1s. the
 offender may

chance to escape the payment of 2, 4, or 6l. besides charges. But there is a clause in
 the statute of 26. Geo. 2. c. 31. which imposes on the like offence a penalty of 10l.
 1. Burn, 24.

+ Sect. 67. By 5. Geo. 3. c. 46. s. 24. “ Whoever
 “ shall be summoned as a witness before such justice touch-
 “ ing the matters aforesaid, either on the part of the pro-
 “ secution, or the party accused, and shall neglect or re-
 “ fuse to appear at the time and place to be for that purpose
 “ appointed, without a reasonable excuse to be allowed of
 “ by such justice ; or appearing shall refuse to be examined
 “ on oath and give evidence before such justice, shall forfeit
 “ twenty shillings, to be levied and paid in such manner
 “ and by such means as are herein-before directed as to
 “ other penalties.”

† *Sec. 68.* By 5. Geo. 3. c. 46. s. 25. "Persons aggrieved by the conviction or judgment of any justice or justices of the peace, for any of the offences aforesaid, and shall give security to the satisfaction of such justice, &c. for payment of penalty, costs, and expences, to be expressed in the warrant of distress on such conviction, may appeal to the next quarter-sessions, unless the same be held within six days or less next after such conviction; and in that case to the justices assembled at the next sessions after such sessions, and not afterwards; and the judgment of such sessions shall be final and conclusive. And if such appeal be frivolous and vexatious, the party aggrieved by the same shall have costs, &c. not exceeding five pounds."

How persons aggrieved may appeal. — N. B. There seems to be a mistake in setting forth that the costs shall be expressed in the warrant of distress; for no power of distress is given: the meaning seems to have been, that the

same shall be expressed in the conviction, as specified in the form prescribed by the act. 1. Burn, 25. But by 9. Geo. 3. c. 6. this act shall not extend to alter any acts made since the 8. Geo. 2. c. 18. relating to the selling of spirituous liquors by retail without licence.

As to the twelfth particular, *viz.* Of extortion in public-houses.

Sec. 69. By 12. Edw. 2. c. 6. "No officer in city or in borough, that by reason of his office ought to keep assizes of wines and victuals, so long as he is attendant to that office, shall not merchandize for wines nor victuals, neither in gross nor by retail; and if any be convicted of such offence, the merchandize shall be forfeited to the king, and the third part thereof delivered to the party that sued for the same, &c."

† *Sec. 70.* By 3. Hen. 8. c. 8. "As often as any victualler chosen to bear any office within any city, borough, or town-corporate, which for the time that he shall stand and be in such office should have the assessing and correction for selling of victuals, that then two discreet and honest persons, of the same city, borough, or town-corporate, not being victuallers, nor any of them being a victualler, shall be chosen by the commonalty of the same city, borough, or town-corporate, in like form as the said officer shall be chosen; which two persons, with the said officer, shall be sworn truly to sell and set the prices and assizes of victual there, for the time that any such victualler shall abide in the same office: and that then it shall be lawful to all and every of the said officers, after the same victuals be set and sold by the same officer, and the said two persons, or one of the same two persons, the other being absent, to merchant and sell wines, and all other victuals in gross, and at retail, during the time " that

"that he shall be in any such office, without any thing
 "therefore to forfeit; the said statute, act, and ordinance
 "of 12. Edw. 2. or any other act or acts, ordinance, or
 "statute to the contrary made in any wise notwithstanding."

Vide C. Jac.
 60. 610.
 2. Roll. 225,
 226.

† *Stat.* 71. By 21. Jac. 1. c. 21. "All hostlers or inn-
 "holders shall sell their horse-bread, hay, oats, beans,
 "pease, provender, and all kind of victual, both for
 "man and beast, for reasonable gain, having respect to
 "the prices for which they shall be sold in the markets ad-
 "joining, without taking any thing for litter."

Carthew 150.
 Skinner 291.
 Raymond 162.
 Roll. Ab. 95.
 9. Hen. 6. 53.

"And every hostler and innkeeper in any town or vil-
 "lage, being a thoroughfare, and no city, town-corporate,
 "or market-town, wherein any common baker, having
 "been an apprentice to the trade for seven years, is dwell-
 "ing, may make within his house horse-bread sufficient,
 "lawful, and of due assize, according to the price of grain
 "or corn; any thing in the said statute contained to the
 "contrary notwithstanding."

"And if the horse-bread, which any of the said host-
 "lers or innholders shall make, be not sufficient, lawful,
 "and of due assize, according to the price of grain and corn,
 "as abovesaid; or that if any of them shall offend in any
 "thing contrary to this act; the justices of assize, justices of
 "oyer and terminer, justices of the peace in every shire, li-
 "berty, or franchise within this realm, sheriffs in their
 "turns, and stewards in their leets, may inquire, hear, and
 "determine the said offences of the said hostlers and inn-
 "holders, who shall be fined for the first offence ac-
 "cording to the quantity of the offence, and for the se-
 "cond offence shall be imprisoned for one month, and for
 "the third shall stand upon the pillory, &c."

As to the thirteenth particular, *viz.* Of publicans suffering
 tippling and drunkenness.

Salkeld 45.

Publicans are
 not to encour-
 age tippling
 in their
 houses.

Stat. 72. By 1. Jac. 1. c. 9. and 4. Jac. 1. c. 15. and 21.
 Jac. 1. c. 7. and 1. Car. 1. c. 4. "If any inn-keeper, vic-
 "tualler, or alehouse-keeper, or any keeper of a tavern, or
 "one who sells wine in his house, and also keeps an inn, or
 "victualling in his house, do permit or suffer any person,
 "whether such person be an inhabitant of the place where
 "such inn, &c. shall be, or not, to continue drinking or
 "tippling in any inn or victualling-house, &c. other than
 "such as shall be invited by any traveller, and shall accom-
 "pany him only during his necessary abode there; and
 "other

“ other than labouring and handicraftsmen in cities, and towns corporate, and market towns upon the usual working days, for one hour at dinner time, to take their diet in an alehouse; and other than labourers and workmen, who for the following of their work by the day, or by the great, in any city, town corporate, market town, or village, shall for the time of their said continuing in work there, sojourn, lodge, or victual in any inn, alehouse, or other victualling-house; or other than for urgent and necessary occasions, to be allowed by two justices of peace, that then every such inn-keeper, &c. shall forfeit ten shillings to the use of the poor of the parish where such offence shall be committed; the same offence being viewed and seen by any mayor, bailiff, or justice of the peace within their several limits, or found by verdict on a trial upon an indictment at assizes, sessions, or court leet, or proved by the oath of (a) one witness to be taken before (a) 21. Jac. 1. any mayor or bailiff, &c. or any one justice of the peace, 7. or by the voluntary confession of any offender, after which confession the oath of such offender shall be taken, and be a sufficient proof against any other offending at the same time.”

Sec. 73. And by 1. Jac. 1. c. 9. s. 3. “ The said penalty of ten shillings shall be levied by the constables or churchwardens of the parishes where the offence shall be committed, by way of distress, and for default of satisfaction within six days, the same to be presently appraised and sold, and the surplusage to be delivered to the party of whom the distress was taken, and for want of sufficient distress the party offending to be by the said mayor, &c. committed to the common gaol, there to remain till the said penalty be paid. And if the said constables or churchwardens do neglect their duty in levying the said penalties, or in default of distress do neglect to certify the same within twenty days to the said mayor, &c. every person so offending shall forfeit forty shillings to the use of the poor of the parish where such offence shall be committed, to be levied by distress of goods, by warrant from any one justice of peace, &c. to be taken and detained six days; within which, if payment be not made, the same goods to be appraised and sold, &c.”

How the penalty for so doing is to be levied.

Sec. 74. But by 1. Jac. 1. c. 9. “ The punishment of such as shall offend against the same within either of the two universities, or the precincts or liberties of the same, shall be done upon the offenders, and justice ministered in this behalf, according to the intent of the said law, by the governors, magistrates, justices of the peace, or other

How this offence may be punished in the universities.

“ principal

“ principal officers of either of the said universities, to whom
 “ in other cases the administration of justice, and correc-
 “ tion and punishment of offenders by the laws of this realm
 “ and their several charters doth belong : and that no other
 “ within their liberties, for any matter concerning the said
 “ law contrary to their several charters, do intermeddle, and
 “ that all penalties to be forfeited by virtue of the said act,
 “ within either of the universities or the liberties or pre-
 “ cinets of the same, shall be levied by the officers or mi-
 “ nisters of either of the said universities, to be from time
 “ to time in that behalf appointed by the vice-chancellors
 “ thereof for the time being respectively ; and that all powers
 “ and authorities given by the said act, shall by the gover-
 “ nors, magistrates, and principal officers abovesaid, of
 “ either of the said universities, be duly executed within
 “ either of the said universities, &c.”

The punish-
 ment of
 drunkards.
 (a) 4. Jac.
 1. c. 5. par. 11.
 (b) 21. Jac.

Sec. 7. By 4. Jac. 1. c. 5. and 21. Jac. 1. c. 7.
 “ Whoever shall be drunk, and within (a) five
 “ such offence shall be convict thereof, either on an indict-
 “ ment at assizes or sessions, or court leet, or before any (b)
 “ justices of peace in any county, or any justice of peace,
 “ or other head officer in any city or town-corporate, upon
 “ view, or confession, or by oath of one witness, shall forfeit
 “ five shillings, to be paid within one week after conviction
 “ to the church-wardens of the parish where the offence
 “ shall be committed, &c. : and if such person shall refuse or
 “ neglect to pay the said forfeiture, the same shall be levied
 “ of his goods by warrant or precept from the said court,
 “ or judge before whom the same conviction shall be : and
 “ if the offender be not able to pay the said sum of five shil-
 “ lings, he shall be committed to the stocks for every of-
 “ fence, there to remain six hours, and if he shall be con-
 “ victed a second time of the like offence, he shall be bound
 “ to the (c) good behaviour, with two sureties in a recog-
 “ nizance of ten pounds. And if any constable or other
 “ inferior officer of the place where the offence shall be com-
 “ mitted, &c. do neglect the correction of the said of-
 “ fender, or the due levying of the said penalties, he shall
 “ forfeit ten shillings to the use of the poor, &c. to be levied
 “ by way of distress, by warrant from any mayor, &c.”

Par. 6.

The p-
 ment re-
 peated up-
 on.
 (d) 1. Ca. 1. 4.
 (e) 21. Jac. 1. 7.
 Supra sect. 17.

Sec. 76. By 4. Jac. 1. c. 5. and 21. Jac. 1. c. 7. and
 1. Car. 1. c. 4. “ It any person shall remain or continue
 “ drinking or tippling in any inn, victualling-house, ale-
 “ house or (d) tavern, &c. whether he be an (e) inhabitant
 “ of the place at the time of such drinking or not ; and the
 “ same be viewed by any mayor, or other head officer or
 “ justice of peace, or confessed by the offender, or proved
 “ by

“ by one witness in the manner prescribed for the above-mentioned offence of suffering tippling in public houses, 4. Jac. 1. 5. unless it be in such cases as are excepted in the above Par. 11. mentioned act, relating to the said offence of suffering tippling, &c. every person so offending, and being convicted within six months, shall forfeit three shillings and four-pence to the use of the poor of the parish where the offence shall be committed, to be levied by way of distress in such manner as the abovementioned forfeitures for drunkenness are to be levied: and if any such offender be not able to pay the said forfeiture, any mayor, head-officer, justice of peace, or court where any such conviction shall be, may set him in the stocks for four hours.” *Supra sect. 20.*

Sect. 77. And by 4. Jac. 1. c. 5. f. 7. “ All constables, church-wardens, headboroughs, tithingmen, aleconners and tidemen shall in their several oaths incident to their several offices, be charged in like sort to prevent the offences contrary to the said statute.” *Officers to be charged on oath to prevent such offences.*

Sect. 78. But by 4. Jac. 1. c. 5. f. 8. it is provided, “ That nothing therein contained shall in any wise abridge the ecclesiastical jurisdiction.” *Ecclesiastical jurisdiction.* And it is further provided, f. 9. “ That no offender, who hath once been punished for his offence against any article of the said act, by any the ways or means before limited, shall be oftentimes punished for the same offence by any other ways or means.” *Only one punishment.*

Sect. 79. By 4. Jac. 1. c. 5. f. 10. “ Nothing in the said act contained shall be prejudicial to either of the universities, but that the chancellor, masters, and scholars, &c. may as fully use and enjoy all their jurisdictions, rights, privileges, and charters, as before the said statute they had or might have done; any thing in the said act to the contrary notwithstanding.” *Not to prejudice the rights of the universities.*

Sect. 80. By 7. Jac. 1. c. 10. “ If any person being an alehouse-keeper, shall be lawfully convicted for any offence committed against any of the branches of either of the said acts of 1. Jac. 1. c. 9. or 4. Jac. 1. c. 5. he shall for the space of three years next ensuing the said conviction, be utterly disabled to keep any such alehouse.” *Additional punishment.* *Vide L. Raymond 1303. 1405.*

4 *Sect. 81.* By 30. Geo. 2. c. 24. f. 14. “ If any person or persons licensed to sell any sorts of liquors, or who shall sell or suffer the same to be sold in his, her, or their house or houses, or in any out-houses, ground, or apartments thereto belonging, shall knowingly suffer any gaming with cards, dice, draughts, shuffle-board, Minstrel, *Publicans not to suffer gaming by servants in their houses on penalty of 10l.*

“ or billiard-tables, skettles, ninepins, or with any other
 “ implement of gaming by any journeymen, labourers, ser-
 “ vants or apprentices, on conviction by confession, or on
 “ the oath of one witness, before any justice of the county
 “ or place within six days after the offence committed, he
 “ shall forfeit forty shillings, and for every like offence af-
 “ terwards ten pounds, to be levied by warrant of distress,
 “ and three fourths thereof paid to the poor, and the other
 “ fourth to the party on whose information the offender
 “ shall be convicted.”

And the par-
 ties who so
 game are lia-
 ble to pay
 from 5 to 20s.

Stat 82. And it is further enacted, “ That if any such
 “ persons shall to game as aforesaid, and complaint thereof
 “ shall be made on oath to a justice of the place, he may if-
 “ sue his warrant to a constable to apprehend and carry such
 “ offender before a justice of the county, and on conviction
 “ as aforesaid, he shall forfeit from five to twenty shillings,
 “ or be committed to hard labour.”

CHAPTER THE SEVENTY-NINTH.

OF MONOPOLIES.

A MONOPOLY is an allowance by the king to a particular person or persons of the sole buying, selling, making, working, or using of any thing, whereby the subject in general is reitained from the freedom of manufacturing or trading which he had before. Monopoly differs from *ingrossing* only in this, that monopoly is by patent from the king, and ingrossing by the act of the subject between party and party.

But for the better understanding of this subject, I shall consider,

1. In what cases Monopolies are illegal.
2. How Monopolies may be established or suppressed.
3. In what cases the king may grant **LETTERS PATENT**.
4. How far **AUTHORS** and **BOOKSELLERS** have an exclusive *copy-right* in literary works.
5. How far **ENGRAVERS** have an exclusive right in engravings.
6. How far **CALLECO PRINTERS** have an exclusive right in their patterns.

As to **THE FIRST POINT**, *viz.* In what cases Monopolies are illegal

See 1. It is said, that all grants of this kind relating to any known trade are made void by the common law, as being against the freedom of trade, and discouraging labour and industry, and restraining persons from getting an honest livelihood by a lawful employment, and putting it in the power of particular persons to set what prices they please on a commodity, all which are manifest inconveniences to the publick (1).
 3. Mod. 132.
 127. 76.
 11. Co. 87.
 1. Roll. 4.
 2. Roll. 174.
 Godb. 254.
 2. Inst. 63. 47.
 10. Mod. 131.
 See Skinner
 132 to 137.
 165 to 173. 197 to 204. 223 to 226. East India Com. v. Sandys.

(1) The king, and none but the king, Skinner 224. by his charter, may constitute fraternities for the management of foreign and domestic trade, 8. Co. 125. who may make by-laws in restraint, if they be for the regulation of trade. See *Com Dig. by-law*, b. 3. c. 3. Trade B. D. 1. D. 4. 10. Mod. 139.

(a) 2. R. Abr. *Sec* 2. And upon this ground it hath been (a) resolved, that the king's grant to any particular corporation of the sole importation of any merchandize is void, whether such merchandize be prohibited by statute or not (2).
 214.
 3. Inst. 182.
 2. Inst. 61.

(2) Hence also it seems, that the king's charter, empowering particular persons to trade to and from such a place is void, so far as it gives such persons an exclusive right of trading and debarring all others: and it seems now agreed, that nothing can exclude a subject from trade but an act of parliament, Ray. 489. Chan. Ca. 165. Vernon 127. Skinner 165. 3. Mod. 126. 3. Bacon 627. c. 3. Trade 4.

(b) 2. R. Abr. *Sec* 7. 3 And for the like reasons also it hath been resolved, that the grant of the sole (b) ingrossing of wills and inventories in a spiritual court, or of the sole (c) making of bills, pleas, and writs in a court of law, to any particular person, is void.
 214.
 (c) 1. Jones
 231.
 2. R. Abr.
 214.
 3. Mod. 75.
 Vern. 120. 10. Mod. 107. 131. 133.

(d) 11. Co. Also it hath been adjudged, that the king's grant of the sole making, importing, and selling of (d) playing cards, is void, notwithstanding the pretence that the playing with them is a matter merely of pleasure and recreation, and often much abused, and therefore proper to be restrained; for since the playing with them is itself lawful and innocent, and the making of them an honest and laborious trade, there is no more reason why any subject should be hindered from getting his livelihood by this trade by any other employment.
 84, 85, &c.
 Mod. 671.
 Nov 173, &c.
 2. Inst. 47.
 Vile 2. Atk.
 424.

3. Inst. 187. *Sec* 5. Also it is holden, that the procuring or making of an unlawful monopoly is further restrained by the common law, by subjecting those who are guilty thereof to a fine and imprisonment for the offence, as being *malum in se*, and contrary to the ancient and fundamental laws of the kingdom. And it is said, that there are precedents of prosecutions of this kind in former days; but I cannot find any modern instance thereof.
 2. Inst. 47.

Sec 6. By 21. Jac. 1. c. 3. "All monopolies, and all commissions, grants, licences, charters and letters patents to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or *Hales*, or of any other monopolies, and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters whatsoever any way tending to the instituting, strengthening, furthering, or countenancing of the same, or any of them, are altogether contrary to the laws of this realm, and so are and shall be utterly void, and of none effect, and in nowise to be put in use or execution."

Sec 7.

Stat. 7. And by 21. Jac. 1. c. 3. f. 2. “ All persons, bodies politic and corporate whatsoever, shall be disabled and incapable to have, use, exercise, or put in ure any monopoly, or any such commission, grant, or licence, &c. or other thing tending as aforesaid, or any liberty, power, or faculty, grounded or pretended to be grounded upon them, or any of them.”

Stat. 8. By 21. Jac. 1. c. 3. f. 7. “ The said act shall not extend to any grant, privilege, power, or authority whatsoever before the said act, made, granted, allowed, or confirmed by any act of parliament, so long as the same shall continue in force.”

Stat. 9. And by 21. Jac. 1. c. 3. f. 9. “ Nothing in the said act contained shall be in any wise prejudicial to any city, borough, or town corporate within this realm, concerning any grants, charters, or letters patents to them made, or concerning any custom used by or within them, or unto any corporations, companies, or fellowships of any art, trade, occupation, or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade or merchandize; but that the same charters, customs, corporations, &c. and their liberties and immunities shall be of such force and effect as they were before the making of the said act, and of none other.”

Stat. 10. By 21. Jac. 1. c. 3. f. 10. “ Nothing in the said act shall extend to any commission, grants, or letters patents, concerning the digging, making, or compounding of saltpetre, or gunpowder, or the casting or making of ordnance, or shot for ordnance; nor to any grant or letters patents of any office erected before the making of the said statute, and then in being, and put in execution, other than such offices as had been decreed by proclamation, but that all such grants, &c. shall be of the like force and effect, and no other, as if the said act had never been made.”

† *Stat. 11.* But it is enacted by 16. Car. 1. c. 21. “ That it shall be lawful for all persons, as well strangers as natural-born subjects, to import any quantities of gunpowder whatsoever, paying such customs and duties for the same as by parliament shall be limited, and that it shall be lawful for all his majesty’s subjects of this his realm of England, to make and sell any quantities of gunpowder at his pleasure, and also to bring into this kingdom any quantities of saltpetre, brimstone, or any other materials for the making of gunpowder: and that if any person shall

1. Jac. 2. c. 8.
5. Geo. 1. c. 26.
11. Geo. 1.
c. 23.
4. Geo. 2.
c. 29.
15. Geo. 2.
c. 32.
21. Geo. 2.
c. 38.
29. Geo. 2.
c. 46.

“ put in execution any letters patents, proclamation, edict,
 “ act, order, warrant, restraint, or other inhibition what-
 “ soever, whereby the importation of gunpowder, saltpetre,
 “ brimstone, or other the materials aforementioned, shall
 “ be anywise prohibited or restrained, he shall incur a *præ-*
 “ *munire*.”

4. Inst. 185.

Sec. 12. By 21. Jac. 1. c. 3. f. 11, 12. “ Nothing in
 “ the said act contained shall extend to any commission or
 “ grant concerning the digging, compounding, or making
 “ of allum, or allum mines, &c. nor concerning the licen-
 “ sing of the keeping of any tavern or selling of wines, to be
 “ spent in the mansion-house, or other place in the tenure
 “ or occupation of the party selling the same; and a farther
 “ provision is made in the latter part of the statute, for some
 “ particular grants to particular corporations and persons,
 “ as *Newcastle upon Tyne, &c.*”

3. Inst. 185.

Sec. 13. But it is said, that the said clause relating to
 allum was needless, because all such mines belong of course
 to the persons in whose grounds they are, and therefore no
 privilege concerning them can be granted but in the king's
 own ground.

AS TO THE SECOND POINT, *vis.* In what manner illegal
 monopolies may be suppressed.

Sec. 14. By 21. Jac. 1. c. 3. f. 3. “ All monopolies,
 “ and all such commissions, grants, and licences, &c. and all
 “ other things tending as aforesaid, and the force and val-
 “ dity of them, ought to be, and shall be examined, heard,
 “ tried, and determined, by and according to the common
 “ laws of this realm, and not otherwise.”

3. Inst. 182,
 183.

2. Atk. 484.

Sec. 15. In the construction of this clause it hath been
 holden, that all matters of this kind ought to be tried in the
 courts of common law only, and not at the council table,
 or in the court of chancery, or any other court of like na-
 ture (3).

(3) Chancery will never establish a right claimed under a charter from the crown,
 till there has been an action at law to try the right, 2. Atkyns 484. But it is the high-
 est point of the Lord Chancellor's jurisdiction to cancel the king's letters patent under
 the Great Seal, 4. Inst. 88. And where a patent is granted to the prejudice of the
 subject, the king of right is to permit him upon his petition to use his name for the re-
 peal of it in a *scire facias* at the king's suit, 3. Lev. 221. Dyer 197. 8. Coke,
Prince's Case. 11. Coke 74. 2. Ventris 344. 6. Mod. 229. But questions concern-
 ing the effect and extent of letters patents can only be tried in the king's courts,
 Cowp. 173.

Sec. 16. And by 21. Jac. 1. c. 3. s. 4. " If any person shall be hindered, grieved, disturbed, or disquieted, or his goods or chattels any way seized, attached, distressed, taken, carried away, or detained, by occasion or pretext of any monopoly, or of any such commission, grant, or licence, &c. or other matter or thing tending as aforesaid, and will sue to be relieved in any of the premises, he shall have his remedy for the same at the common law, by action grounded on the said statute, to be heard and determined in the king's bench, common pleas, or exchequer, against the party by whom he shall be so hindered or grieved, &c. or by whom his goods shall be so seized or attached, &c. wherein every such person which shall be so hindered or grieved, &c. or whose goods shall be so seized or attached, &c. shall recover three times so much as the damages which he sustained by means of such hindrance, &c. and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid prayer, privilege, injunction, or order of restraint, shall be in anywise prayed, granted, admitted, or allowed, nor any more than one imparlance: and if any person shall, after notice that the action depending is grounded upon the said statute, cause or procure any action at the common law grounded thereon to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the court wherein such action shall be depending, or after judgment shall cause or procure the execution to be stayed or delayed, by colour or means of any order, warrant, power or authority, save only by writ of error or attain, that then the said person or persons so offending shall incur a *præmunire*."

Sec. 17. It is said, that the first branch of this last clause relating to the delaying of causes of this kind before judgment, not only extendeth to the privy council, chancery, exchequer chamber, and the like, but also to those who shall procure any warrant from the king for such purpose; and it is said, that the latter branch relating to the delaying of execution after judgment extendeth even to the judges of the court where the cause is depending.

AS TO THE THIRD POINT, *viz.* In what cases the king may grant LETTERS PATENT for the sole making and vending of any manufacture, &c.

Sec. 18. It seems to be the better opinion, that the king may grant to particular persons the sole use of some particular employments (as of printing the *holy scriptures* and *law books*,
 1. Mod. 256.
 3. Keb. 792.
 3. Mod. 75.
 Lucas 106.
 books, 107.

books, &c.), whereof an unrestrained liberty might be of dangerous consequence.

† *Stat.* 19. And by 21. Jac. 1. c. 3. f. 10. it is provided, "That the restraints of that statute shall not extend to any letters patents or grants of privilege concerning printing."

Noy. 182, 183. *Stat.* 20. It seemeth clear, that the king may, for a reasonable time, make a good grant to any one of the sole use of any art invented or first brought into the realm by the grantee.

Stat. 21. Also by 21. Jac. 1. c. 3. f. 6. "No declaration in the statute mentioned shall extend to any LETTERS PATENTS and grants of privilege for the term of *fourteen years*, or under, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others, at the time of making such letters patents and grants, shall not use, so AS ALSO they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient, the said *fourteen years* to be accounted from the date of the first letters patents, or grant of such privilege, but that the same shall be of such force as they should be if the said act had never been made, and of none other."

3. Inst. 184. *Stat.* 22. It hath been resolved, that no new invention concerning the working of any manufacture is within the meaning of this exception, unless it be substantially new, and not barely an additional improvement of an old one.

Edgbury v. Stephens, 1. Salk. 447. *Stat.* 23. But it hath been resolved, that a patent granted for an old invention imported from abroad is good, provided it be entirely new in this kingdom.

3. Inst. 184. 10. Mod. 181. *Stat.* 24. Also it hath been holden, that a new invention to do as much work in a day by an engine, as formerly used to employ many hands, is not within the said exception, because it is inconvenient in turning so many labouring men to idleness (4).

(4) But see Arkwright's case *contra*.

3. Inst. 184. Godb. 125. *Stat.* 25. Also it seemeth clear, that no old manufacture in use before can be prohibited in any grant of the sole use of any such new invention.

Turner v. Winter, 1. T. Rep. 602. *Stat.* 26. And it is decided, that a patent is void if the specification is ambiguous, or gives directions which tend to mislead the publick.

AS TO THE FOURTH POINT, *viz.* How far authors and bookfellers have an exclusive copy-right in literary works, I shall consider,

1. For what length of time such copy-right may continue.

2. How far the universities are intitled to copy-right.

3. In what manner copies are to be entered at stationers-hall.

4. In what manner such copy-right may be assigned.

5. What shall be considered literary works, and what as *pirating* a copy-right.

6. What remedies are given to preserve this right.

As to the first particular, *viz.* For what length of time such copy-right may continue.

† *Sec.* 27. By 8. Ann, c. 19. "The author of any book or books, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of *fourteen years*, to commence from the day of first publishing the same, and no longer: PROVIDED ALWAYS, that after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years."

† *Sec.* 28. It has been decided, upon great argument and deliberation, that the sole and exclusive copy-right in perpetuity which was conceived to remain in authors, or their assigns, by the common law, after the publication of their works, is taken away by the above statute, and that they have now no other right than that which the statute confers.

The case of
Miller v Tay-
lor, 4. Burr-
2303. to 2417.

† *Sec.* 29. It is said that this statute, being intended to secure the property of books in the authors themselves, or the purchasers of the copy, as some recompence for their pains and labour in writing such works as may be useful to the learned world, shall not be considered as establishing a monopoly, and therefore ought to receive a liberal construction.

Ld. Hard-
wicke, 2. Atk.
143.

As to the second particular, *viz.* How far the universities are intitled to copy-right.

† *Seet.* 30. By 8. Ann. c. 19. f. 9. it is provided, "That nothing in the act contained shall extend, or be construed to extend, either to prejudice, or confirm any right that the universities of *Oxford* and *Cambridge*, or the four universities in *Scotland*, or any of them, or any person or persons have or claim to have to the printing or reprinting any book or copy already printed or hereafter to be printed."

Universities,
&c. to have,
for ever, the
sole right of
printing, &c.

Seet. 31. And by 15. Geo. 3. c. 53. "The said universities of *England* and *Scotland*, and the colleges of *Eton*, *Westminster*, and *Winchester* respectively, shall, at their several presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in *Scotland*, or to or in trust for the said colleges of *Eton*, *Westminster*, and *Winchester*, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term; any law or usage to the contrary hereof in any wise notwithstanding."

Persons print-
ing or selling
such books
shall forfeit
the same, and
also 1d. for
every sheet;

† *Seet.* 32. By 15. Geo. 3. c. 53. f. 2. it is further enacted, "That if any bookseller, printer, or other person whatsoever, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the university, college, or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the
"true"

“ true intent and meaning of this act; the one moiety one moiety to
 “ thereof to the king’s most excellent majesty, his heirs and his majesty,
 “ successors, and the other moiety thereof to any person and the other
 “ or persons who shall sue for the same; to be recovered in to the profe-
 “ any of his majesty’s courts of record at *Westminster*, or in ctor.
 “ the court of session in *Scotland*, by action of debt, bill,
 “ plaint, or information, in which no wager of law, essoin,
 “ privilege, or protection, or more than one imparlance,
 “ shall be allowed.”

† *Sect. 33.* But by 15. Geo. 3. c. 53. s. 3. it is provided, “ That nothing in this act shall extend to grant any
 “ exclusive right, otherwise than so long as the books or
 “ copies belonging to the said universities or colleges are
 “ printed only at their own printing presses within the said
 “ universities or colleges respectively, and for their sole be-
 “ nefit and advantage; and that if any university or college
 “ shall delegate, grant, lease, or sell their copy-rights, or
 “ exclusive rights of printing the books hereby granted, or
 “ any part thereof, or shall allow, permit, or authorise
 “ any person or persons, or bodies corporate, to print or
 “ reprint the same, that then the privileges hereby granted
 “ are to become void and of no effect, in the same manner
 “ as if this act had not been made; but the said universities
 “ and colleges, as aforesaid, shall nevertheless have a right
 “ to sell such copies so bequeathed or given as aforesaid, in
 “ like manner as any author or authors now may do under
 “ the provisions of the statute of the eighth year of her ma-
 “ jesty queen *Anne*.”

† *Sect. 34.* By 15. Geo. 3. c. 53. s. 4. “ And whereas No person
 many persons may through ignorance offend against this act, subject to pe-
 unless some provision be made whereby the property of alties, unless
 every such book as is intended by this act to be secured to entered be-
 the said universities, colleges, and houses of learning with- fore, &c.
 in the same, and to the said universities in *Scotland*, and Books must be
 to the respective colleges of *Eton*, *Westminster*, and *Winchester*, entered with-
 may be ascertained and known;” be it therefore enacted by in two months
 the authority aforesaid, “ That nothing in this act contain- after bequest.
 “ ed shall be construed to extend to subject any bookseller,
 “ printer, or other person whatsoever, to the forfeitures or
 “ penalties herein mentioned, for or by reason of the print-
 “ ing or reprinting, importing or exposing to sale, any
 “ book or books, unless the title to the copy of such book
 “ or books, which has or have been already bequeathed
 “ or given to any of the said universities or colleges afore-
 “ said, be entered in the register-book of the company of
 “ stationers kept for that purpose, in such manner as hath
 “ been usual, on or before the twenty-fourth day of *June*,
 “ one

" one thousand seven hundred and seventy-five; and of
 " all and every such book or books as may or shall here-
 " after be bequeathed or given as aforesaid, be entered in
 " such register within the space of two months after any
 " such bequest or gift shall have come to the knowledge of
 " the vice chancellors of the said universities, or heads of
 " houses and colleges of learning, or of the principal of
 " any of the said four universities respectively; for every
 " of which entries so to be made as aforesaid, the sum of
 " six-pence shall be paid, and no more; which said regis-
 " ter-book shall and may, at all seasonable and convenient
 " times, be referred to, and inspected by any bookseller,
 " printer, or other person without any fee or reward; and
 " the clerk of the said company of stationers shall, when
 " and as often as thereunto required, give a certificate
 " under his hand of such entry or entries, and for every
 " such certificate may take a fee not exceeding six-pence."

If clerk neg-
 lect to make
 entry, &c. pro-
 prietor to have
 like benefit,
 &c.

+ *Stat. 35.* By 15. Geo. 3. c. 53. s. 5. it is further
 enacted, " That if the clerk of the said company of station-
 " ers for the time being shall refuse or neglect to register,
 " or make such entry or entries, or to give such certificate,
 " being thereunto required by the agent of either of the
 " said universities or colleges aforesaid, lawfully authorised
 " for that purpose, then either of the said universities or
 " colleges aforesaid, being the proprietor of such copy-
 " right or copy-rights as aforesaid (notice being first given
 " of such refusal by advertisement in the *Gazette*), shall have
 " the like benefits as if such entry or entries, certificate or
 " certificates had been duly made and given; and the clerk
 " so refusing shall, for every such offence, forfeit twenty
 " pounds to the proprietor or proprietors of every such
 " copy-right; to be recovered in any of his majesty's courts
 " of record at *Westminster*, or in the court of session in
 " *Scotland*, by action of debt, bill, plaint, or information,
 " in which no wager of law, essoin, privilege, protection,
 " or more than one imparlance, shall be allowed."

Limitation of
 actions.

+ *Stat. 36.* And by 15. Geo. 3. c. 53. s. 7. it is further
 enacted, " That if any action or suit shall be commenced
 " or brought against any person or persons whatsoever, for
 " doing, or causing to be done, any thing in pursuance of
 " this act, the defendants in such action may plead the ge-
 " neral issue, and give the special matter in evidence; and
 " if upon such action a verdict, or if the same shall be
 " brought in the court of session in *Scotland*, a judgment be
 " given for the defendant, or the plaintiff become nonsuited,
 " and discontinue his action, then the defendant shall have

General issue.

" and

“ and recover his full costs, for which he shall have the
 “ same remedy as a defendant in any case by law hath.”

As to the third particular, *viz.* In what manner copies
 are to be entered at stationers-hall.

† *Stat.* 37. By 8. Ann, c. 19. s. 2. “ And whereas many
 persons may through ignorance offend against this act, un-
 less some provision be made whereby the property in every
 such book as is intended by this act to be secured to the
 proprietor or proprietors thereof, may be ascertained, as
 likewise the consent of such proprietor or proprietors for
 the printing or reprinting of such book or books may from
 time to time be known;” be it therefore further enacted,
 “ That nothing in this act contained shall be construed to
 “ extend to subject any bookseller, printer, or other per-
 “ son whatsoever, to the forfeitures or penalties therein
 “ mentioned, for or by reason of the printing or reprinting
 “ of any book or books without such consent as aforesaid,
 “ unless the title to the copy of such book or books here-
 “ after published shall, before such publication, be entered
 “ in the register-book of the company of stationers, in such
 “ manner as hath been usual, which register-book shall
 “ at all times be kept at the hall of the said company, and
 “ unless such content of the proprietor or proprietors be in
 “ like manner entered as aforesaid, for every of which se-
 “ veral entries six-pence shall be paid, and no more; which
 “ said register-book may, at all reasonable and convenient
 “ times, be resorted to, and inspected by any bookseller,
 “ printer, or other person, for the purposes before-men-
 “ tioned, without any fee or reward; and the clerk of the
 “ said company of stationers shall, when and as often as
 “ thereunto required, give a certificate under his hand of
 “ such entry or entries, and for every such certificate may
 “ take a fee not exceeding six-pence.”

Copies of books to be entered before publication in the register-book of the company of stationers; which may be inspected at any time without fee.

Clerk of the company to give a certificate of such entry.

† *Stat.* 38. By 8. Ann, c. 19. s. 3. it is provided,
 “ That if the clerk of the said company of stationers for
 “ the time being shall refuse or neglect to register, or make
 “ such entry or entries, or to give such certificate, being
 “ thereunto required by the author or proprietor of such
 “ copy or copies, in the presence of two or more credible
 “ witnesses, that then such person and persons for refusing,
 “ notice being first duly given of such refusal, by an ad-
 “ vertisement in the *Gazette*, shall have the like benefit
 “ as if such entry or entries, certificate or certificates had
 “ been duly made and given; and that the clerks for re-
 “ fusing shall, for any such offence, forfeit to the proprietor
 “ of such copy or copies the sum of twenty pounds, to be
 “ recovered

Penalty of the clerk refusing so to do.

"recovered in any of her majesty's courts of record a
 " *Westminster*, by action of debt, bill, plaint, or informa-
 " tion, in which no wager of law, effoin, privilege, or pro-
 " tection, or more than one imparlance shall be allowed."

Nine copies of
 each book shall
 be delivered to
 the ware-
 house-keeper
 of the compa-
 ny of station-
 ers, for the use
 of the univer-
 sity libraries,
 &c.

Warehouse-
 keeper to de-
 liver the books
 ten days after
 demand.

Penalty of
 proprietor, &c.
 not observing
 the directions
 of this act.

† *Secl.* 39. By 8. Ann. c. 19. s. 5. it is provided, "That
 " nine copies of each book or books, upon the best paper
 " that shall be printed and published as aforesaid, or re-
 " printed and published with additions, shall, by the printer
 " and printers thereof, be delivered to the warehouse-keeper
 " of the said company of stationers for the time being, at the
 " hall of the said company, before such publication made,
 " for the use of the royal library, the libraries of the uni-
 " versities of *Oxford* and *Cambridge*, the libraries of the four
 " universities in *Scotland*, the library of *Sion College* in *Lon-*
 " *don*, and the library commonly called the library belong-
 " ing to the faculty of advocates at *Edinburgh* respectively,
 " which said warehouse-keeper is hereby required, within
 " ten days after demand by the keepers of the respective li-
 " braries, or any person or persons by them or any of them
 " authorized to demand the said copy, to deliver the same
 " for the use of the aforesaid libraries; and if any propri-
 " etor, bookseller, or printer, or the warehouse-keeper of
 " the said company of stationers, shall not observe the di-
 " rection of this act therein, that then he and they so mak-
 " ing default in not delivering the said printed copies as
 " aforesaid, shall forfeit, besides the value of the said printed
 " copies, the sum of five pounds for every copy not so de-
 " livered; as also the value of the said printed copy not so
 " delivered; the same to be recovered by the queen's ma-
 " jesty, her heirs and successors, and by the chancellor,
 " masters, and scholars of any of the said universities, and
 " by the president and fellows of *Sion College*, and the said
 " faculty of advocates at *Edinburgh*, with their full costs
 " respectively."

As to the fourth particular, *viz.* In what manner such
 copy-right may be assigned.

Knapplock v.
Curle, 4. Vin.
Abt. 278.

Secl. 40. It hath been determined that the author is not
 divested of the copy-right by his delivering the manuscript
 of it to the printer to be printed, for this is only an autho-
 rity to the printer to print that edition; and therefore the au-
 thor may afterwards grant the copy-right to another person.

2. Bro. C. C.
 30.

Secl. 41. It hath also been determined, that if an author
 make an assignment of "all his right and interest" in his
 work, he thereby transfers not only his absolute right for
 the first fourteen years, but also his contingent interest
 in

in the second term that may accrue to him on his being alive at the determination of the first.

As to the fifth particular, *viz.* What shall be considered a literary work, and what a *pirating* of copy-right.

† *Sec. 42.* It has been determined, that a person who *Bach v. Long-* writes a *sonata*, or other musical composition, is intitled to man, *Cowp.* the exclusive copy-right of it under 8. Ann, c. 9.; for the ^{623.} recital of the statute says, "Whereas printers, booksellers, and other persons have, of late, frequently taken the liberty of printing, reprinting, and publishing books and other writings, without the consent of the authors or proprietors of such books and writings, &c." and therefore the statute is not confined to language and letters; and music is a science and may be written; that is, the composer's ideas may be conveyed by signs and marks, which is sufficient; for, by a more narrow interpretation of the statute, algebra, mathematics, arithmetic, hieroglyphics, would be excluded.

† *Sec. 43.* It hath also been determined, that the publication of an epistolary correspondence, either by the permission of the writer or receiver of the letters, is as much the subject of copy-right as any other literary work. *Pope v. Curl,* 2. Atk. 342.

† *Sec. 44.* The principal part of Mr. Gray's poems had been published many years; Mr. *Mason v. Murs-* *Mason* republished them, with the life of Mr. Gray, and introduced other poems of Mr. Gray's, till then unpublished; and it was held that this was an original work, and that the author was intitled to copy-right therein. *ray,* 2. Br. C. C. 25.

† *Sec. 45.* But if an author publish a work, as, for instance, the translation of *Don Quixote*, and another person publish the same work, only adding plates, the mere act of embellishing will not make the second publication an original work. *2. Br. C. C. 85.*

† *Sec. 46.* So also where a book of roads was printed in letter-press, and it was republished before the copy-right had expired, with the great roads engraved on copper-plates, and the cross roads in letter-press, it was decreed that this alteration did not make the whole of the second publication original, and an injunction was granted; but if a man make a new survey by actual measurement of the same roads, of which a survey is before published, a publication of the second survey would be a new work, how similar soever it might be to the first publication. *Carnan v. Bowles,* 2. Br. C. C. 80.

Barrow v.
Nutt, 2. Atk.
143.

† *Sett.* 47. It seems to be agreed, that the author of a real and fair abridgment of a work is intitled to the copy-right of it; for abridgments may with great propriety be called new books, because not only the paper and print, but the invention, learning, and judgment of the author is shewn in them; and in many cases abridgments are extremely useful, as *Le Journal des Sçavans*, and several others that might be mentioned, although in some instances they may prejudice the original work, by mistaking and curtail-
ing the sense of the author: but when books are colourably shortened only, as where a book called "*Modern Crown Law*" appeared in fact borrowed almost *verbatim* from *Hale's Pleas of the Crown*, only some old repealed statutes left out, and all the *Latin* and *French* quotations put into English, it was held that the author was not intitled to any copy-right therein.

Giles v. Wil-
cox, 2. Atk.
141.

† *Sett.* 48. So also where a second book no otherwise varies from the first than by leaving out certain parts, and only by that means shortening it, it has been held not to be a fair abridgment, and that the author had no copy-right therein.

Bar. Chan.
Rep. 369.

Doddsley v.
Kennedy,
Ambl. 696.

† *Sett.* 49. But extracts from a work may be published in a magazine.

Colman v.
Warren,
5. Term Rep.
245.

† *Sett.* 50. It hath been determined, that after a dramatic work has been represented on the stage, and the copy-right of the drama sold by the author, the representation of the same piece on another stage is not a piracy within the 8. Ann. c. 19.; for reporting any thing from memory can never be a publication within that statute.

Macklin v.
Richardson,
Ambler 694.

† *Sett.* 51. But it hath been determined, that if a dramatic author suffer his piece to be performed only by his particular permission, taking the copy from the prompter when the representation is over, but never prints or publishes it, it is piracy to take down the piece in short-hand while it is representing, and to publish it, although the inaccuracies of the short-hand writer are corrected by the memory of the publisher.

Pope v. Curl,
1. Atk. 242.
1. Bl. Rep.
132.

† *Sett.* 52. So also the writer of familiar letters retains a right to the contents of his letters, and the person to whom they are sent has only a special property in them; and the sending does not give a licence to any person whatsoever to publish them to the world, for the property of them subsists in the writer.

As to the sixth particular, *viz.* What remedies are given to preserve copy right.

† *Sec.* 53. By 8. Ann. c. 19. f. 1. " If any bookseller, printer, or other person whatsoever, within the times granted and limited by this act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted, without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained as aforesaid; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask and make waste paper of them: and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the queen's most excellent majesty, her heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same, to be recovered in any of her majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance shall be allowed."

† *Sec.* 54. By 8. Ann. c. 19. f. 7. it is further enacted, " That nothing in this act contained shall extend, or be construed to extend, to prohibit the importation, vending, or selling of any books in *Greek*, *Latin*, or any other foreign language printed beyond the seas; any thing in this act contained to the contrary notwithstanding.

† *Sec.* 55. By 8. Ann. c. 19. f. 6. it is further enacted, " That if any person or persons incur the penalties contained in this act, in that part of *Great Britain* called *Scotland*, they shall be recoverable by any action before the court of session there."

† *Sec.* 56. By 8. Ann. c. 19. f. 8. it is further enacted, " That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing or causing to be done any thing in pursuance of this act,

General issue.

“ the defendants in such action may plead the general issue,
 “ and give the special matter in evidence ; and if upon such
 “ action a verdict be given for the defendant, or the plaintiff
 “ become nonsuited, or discontinue his action, then the
 “ defendant shall have and recover his full costs, for which
 “ he shall have the same remedy as a defendant in any case
 “ by law hath.”

Actions for
 offences
 against this act
 to be brought
 in three
 months.

+ Sect. 57. By 8 Ann. c. 19. s. 10. it is further enacted,
 “ That all actions, suits, bills, indictments, or informations
 “ for any offence that shall be committed against this act,
 “ shall be brought, sued, and commenced within three
 “ months next after such offence committed, or else the
 “ same shall be void and of none effect.”

Pope v. Curl,
 4. Atk. 342.

+ Sect. 58. It hath been determined on this statute, that
 if a book has been pirated, and printed in *Ireland*, yet that
 will not excuse the vendor from the penalties of this act.

Lord Mans-
 field, 1. Bl.
 Rep. 330.

+ Sect. 59. So also it hath been determined, that an
 action may be brought, or an injunction obtained in a court
 of equity, although the publication be not entered at
Stationers' Hall.

No person
 subject to pe-
 nalties in the
 said act, unless
 the title to the
 copy of the
 whole be en-
 tered, &c.

+ Sect. 60. But no one can be prosecuted for the
 penalties inflicted by 8. Ann. c. 19. s. 1. unless the work
 is entered according to the direction of 15. Geo. 3.
 c. 53. which enacts, “ That no person or persons what-
 “ soever shall be subject to the penalties in the said
 “ act mentioned, for or by reason of the printing or
 “ reprinting, importing, or exposing to sale, any book or
 “ books, without the consent mentioned in the said act,
 “ unless the title to the copy of the whole of such book,
 “ and every volume thereof, be entered, in manner directed
 “ by the said act, in the register-book of the company of
 “ stationers, and unless nine such copies of the whole of
 “ such book or books, and every volume thereof printed
 “ and published, or reprinted or republished, as therein
 “ mentioned, shall be actually delivered to the warehouse-
 “ keeper of the said company, as therein directed, for the se-
 “ veral uses of the several libraries in the said act mentioned.”

+ Sect. 61. By 12. Geo. 2. c. 36. s. 1. “ It shall not be lawful
 “ for any person or persons whatsoever to import or bring
 “ into this kingdom for sale, any book or books first com-
 “ posed or written, and printed and published in this king-
 “ dom, and reprinted in any other place or country
 “ whatsoever ; and if any person or persons shall import or
 “ bring into this kingdom for sale any printed book or
 “ books so first composed or written, and printed in this
 “ king

“ kingdom, and reprinted in any other place or country,
 “ as aforesaid; or knowing the same to be so reprinted or
 “ imported, contrary to the true intent and meaning of
 “ this act, shall sell, publish, or expose to sale any such
 “ book or books; then every such person or persons so
 “ doing or offending, shall forfeit the said book or books,
 “ and all and every sheet or sheets thereof; and the same
 “ shall be forthwith damasked, and made waste paper; and
 “ further, that every such offender or offenders shall forfeit
 “ the sum of five pounds, and double the value of every
 “ book which he or they shall so import or bring into this
 “ kingdom, or shall knowingly sell, publish, or expose to
 “ sale, or cause to be sold, published, or exposed to sale,
 “ contrary to the true intent and meaning of this act; the
 “ one moiety thereof to the king’s most excellent majesty,
 “ his heirs and successors, and the other moiety to any
 “ person or persons that shall sue for the same; to be re-
 “ covered with costs of suit in any of his majesty’s courts
 “ of record at *Wellminster* by action of debt, bill, plaint, or
 “ information; in which no wager of law, essoin, or pro-
 “ tection, or more than one imparlance shall be allowed;
 “ and if the offence be committed in *Scotland*, to be reco-
 “ vered before the court of session there, by summary
 “ action: provided that this act shall not extend to any
 “ book that has not been printed or reprinted in this king-
 “ dom within twenty years before the same shall be imported.”

† *Stat.* 62. By 12. Geo. 2. c. 36. s. 2. it is further enacted,
 “ That nothing in this act contained shall extend to pre-
 “ vent or hinder the importation of any book first composed
 “ or written, and printed in this kingdom, which shall or
 “ may be reprinted abroad, and inserted among other books
 “ or tracts, and to be sold therewith, in any collection
 “ where the greatest part of such collection shall have been
 “ first composed or written, and printed abroad; any thing
 “ in this act contained to the contrary notwithstanding.”

† *Stat.* 63. It hath been determined under this statute,
 that two penalties may be incurred on the same day, if the
 acts of sale are distinct.

Brooke v.
Miliken,
 3. Term Rep.
 509.

† *Stat.* 64. By 34. Geo. 3. c. 20. s. 57. “ It shall not be
 “ lawful for any person or persons whatsoever to import or
 “ bring into this kingdom, for sale, any book or books
 “ first composed, written, or printed, and published in this
 “ kingdom, and reprinted in any other country or place
 “ whatsoever; and if any person or persons shall import or
 “ bring, or cause to be imported or brought into this
 “ kingdom, for sale, any printed book or books first com-
 “ posed, written, or printed and published in this king-

Penalty on
 importing for
 sale, books
 first printed in
 this kingdom,
 and reprinted
 in any other,
 &c.

Commission-
ers of customs
and excise
may reward
their officers
seizing such
books.

dom, and reprinted in any other country or place as
afore said, or shall knowingly sell, publish, expose to sale,
or have in his, her, or their possession for sale, any such
book or books, then every such book and books shall be
forfeited, and shall and may be seized by any officer or
officers of customs or excise, and the same shall be forth-
with made waste paper; and further, that every person
and persons so offending, being duly convicted thereof,
shall for every such offence forfeit the sum of ten pounds,
and double the value of each and every copy of such
book or books which he, she, or they, shall so import
or bring, or cause to be imported or brought into this
kingdom, or shall knowingly sell, publish, expose to sale,
or cause to be sold, published, or exposed to sale, or shall
have in his, her, or their possession for sale, contrary to
the true intent and meaning of this act; and the com-
missioners of customs in *England* and *Scotland* respec-
tively (in case the same shall be seized by any officer or
officers of the customs), and the commissioners of excise
in *England* and *Scotland* respectively (in case the same
shall be seized by any officer or officers of excise), shall
also reward the officer or officers who shall seize any such
books which shall be so made waste paper of, with such
sum or sums of money as they the said respective com-
missioners shall think fit, not exceeding the value of such
books; such rewards respectively to be paid by the said
respective commissioners out of any money in their hands
respectively arising from the duties by this act imposed:
provided, that this act shall not extend to any book that
has not been printed or reprinted in this kingdom within
twenty years before the same shall be imported, nor to
any book reprinted abroad, and inserted among other
books or tracts to be sold therewith in any collection
where the greatest part of such collection shall have been
first composed or written abroad."

As to the FIFTH POINT, viz. How far engravers have an
exclusive right to engravings.

Property of
prints vested
in the inven-
tor for four-
teen years.
3. Will. 60.

+ *Stat. 65.* By 8. Geo. 2. c. 13. s. 1. it is enacted, "That
every person who shall invent and design, engrave, etch,
or work in *mezzotinto* or *chiara oscuro*, or from his own
works and inventions shall cause to be designed and en-
graved, etched, or worked in *mezzotinto* or *chiara oscuro*,
any historical or other print or prints, shall have the sole
right and liberty of printing and reprinting the same for
the term of fourteen years, to commence from the day of
the first publishing thereof, which shall be truly engraved
with the name of the proprietor on each plate, and
printed

" printed on every such print or prints; and that if any
 " printseller or other person whatsoever, from and after the Proprietor's name to be affixed to each print.
 " twenty-fourth day of *June* one thousand seven hundred
 " and thirty-five, within the time limited by this act, shall
 " engrave, etch, or work as aforesaid, or in any other Penalty on print-sellers or others pirating the same.
 " manner copy and sell, or cause to be engraved, etched, or
 " copied and sold, in the whole or in part, by varying,
 " adding to, or diminishing from the main design, or shall
 " print, reprint, or import for sale, or cause to be printed,
 " reprinted, or imported for sale, any such print or prints,
 " or any parts thereof, without the consent of the pro-
 " prietor or proprietors thereof first had and obtained in
 " writing, signed by him or them respectively in the pre-
 " sence of two or more credible witnesses; or knowing the
 " same to be so printed or reprinted, without the consent
 " of the proprietor or proprietors, shall publish, sell, or
 " expose to sale, or otherwise, or in any other manner dis-
 " pose of, or cause to be published, sold, or exposed to sale,
 " or otherwise, or in any other manner disposed of, any
 " such print or prints, without such consent first had and
 " obtained as aforesaid, then such offender or offenders
 " shall forfeit the plate or plates on which such print or
 " prints are or shall be copied, and all and every sheet or
 " sheets (being part of, or whereon such print or prints
 " are or shall be so copied or printed) to the proprietor or
 " proprietors of such original print or prints, who shall
 " forthwith destroy and damask the same; and further,
 " that every such offender or offenders shall forfeit five
 " shillings for every print which shall be found in his, her,
 " or their custody, either printed or published, and exposed
 " to sale, or otherwise disposed of, contrary to the true
 " intent and meaning of this act; the one moiety thereof
 " to the king's most excellent majesty, his heirs and suc-
 " cessors, and the other moiety thereof to any person or
 " persons that shall sue for the same, to be recovered in any
 " of his majesty's courts of record at *Westminster*, by action
 " of debt, bill, plaint, or information, in which no wager
 " of law, effoin, privilege, or protection, or more than one
 " imparlance, shall be allowed."

+ *Sect. 66.* By 8. Geo. 2. c. 13. s. 2. it is enacted, Not to extend to purchasers of plates from the original proprietors.
 " That it shall and may be lawful for any person or persons,
 " who shall hereafter purchase any plate or plates for
 " printing, from the original proprietors thereof, to print
 " and reprint from the said plates, without incurring any
 " of the penalties in this act mentioned."

+ *Sect. 67.* By 8. Geo. 2. c. 13. s. 3. it is further
 enacted, " That if any action or suit shall be commenced

Limitation of actions, " or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this act, the same shall be brought within the space of three months after so doing; and the defendant and defendants, in such action or suit, shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law."

+ *Stat.* 68. By 8. Geo. 2. c. 13. s. 4. it is further enacted, " That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards; any thing in this act contained to the contrary notwithstanding."

Original inventors, &c. of prints, &c.

+ *Stat.* 69. By 7. Geo. 3. c. 38. s. 1. it is enacted, " That all and every person and persons who shall invent or design, engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in *mezzotinto* or *chiaro oscuro*, any historical print or prints, or any print or prints, of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said act and this act, under the restrictions and limitations hereinafter mentioned."

inspired to the benefit of recited and present act, &c.

+ *Stat.* 70. By 7. Geo. 3. c. 38. s. 2. " All and every person and persons who shall engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act, and this act, for the term hereinafter mentioned, in like manner as if such print had been engraved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former act, every such person shall be
" liable

“ liable to the penalties contained in the said act, to be recovered as therein and hereinafter is mentioned.”

† *Sect. 71.* By 7. Geo. 3. c. 38. s. 5. “ All and every the penalties and penalty inflicted by the said act, and extended, and meant to be extended, to the several cases comprised in this act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said act is declared and appointed; and the plaintiff or common informer, in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former act), shall recover the same, together with his full costs of suit.”

† *Sect. 72.* By 7. Geo. 3. c. 38. s. 6. “ The party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.”

† *Sect. 73.* By 7. Geo. 3. c. 38. s. 7. it is further enacted, “ That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former act and this act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned.” The right intended vested in the proprietors for twenty-eight years.

† *Sect. 74.* By 7. Geo. 3. c. 38. s. 8. “ If any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants, in any such action or suit, shall or may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants, in any other case, hath or have by law.” Limitation of actions.
General issue.
Full costs.

† *Sect. 75.* By 17. Geo. 3. c. 57. s. 1. it is further enacted, “ That if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid acts, or either of them, engrave, etch, or work, or cause or consent of the proprietor, he shall be liable to damages, and double costs.” If any engraver, &c. shall engrave, &c. any print, without the double costs.
“ pro-

" procure to be engraved, etched, or worked, in *mezzotinto*
 " or *chiaro oscuro*, or otherwise, or in any other manner
 " copy in the whole, or in part, by varying, adding to, or
 " diminishing from, the main design, or shall print, reprint,
 " or import for sale, or cause or procure to be printed, re-
 " printed, or imported for sale, or shall publish, sell, or
 " otherwise dispose of, or cause or procure to be published,
 " sold, or otherwise disposed of, any copy or copies of any
 " historical print or prints, or any print or prints of any
 " portrait, conversation, landscape, or architecture, map,
 " chart, or plan, or any other print or prints whatsoever,
 " which hath, or have been, or shall be, engraved, etched,
 " drawn, or designed, in any part of *Great Britain*, without
 " the express consent of the proprietor or proprietors
 " thereof first had and obtained in writing, signed by him,
 " her, or them respectively, with his, her, or their own
 " hand or hands, in the presence of, and attested by, two or
 " more credible witnesses, then every such proprietor or
 " proprietors shall and may, by and in a special action
 " upon the case, to be brought against the person or persons
 " so offending, recover such damages as a jury on the trial
 " of such action, or on the execution of a writ of enquiry
 " thereon, shall give or assess, together with double costs of
 " suit."

Blackwell v. Harper in chancery, before Lord Hardwicke, Dec. 1740. 2. Atk. 93. + *Sec.* 76. It has been determined upon this statute, that the words "*invent*," "his own invention," do not confine the copy-right merely to works originating in the imagination of the artist, as allegorical or fabulous representations; but that they mean the designing or engraving of any thing that is already in nature, as medicinal plants, buildings, houses, gardens, &c.

Lord Hardwicke. 2. Atk. 93. + *Sec.* 77. It has also been said by very high authority, that the words *sculpsit et delineavit* added to the name of the person who prints the work are sufficient to shew that person to be the proprietor.

(a) *Ibid.* + *Sec.* 78. It was also doubted, whether the property did not vest in the engraver, designer, &c. though the day of the publication be not annexed to the foot of the print, compliance with that direction of the act being thought only necessary to make the penalty accrue (a). But it has been determined, that the two conditions of the act, viz. *the day of the first publishing the print*, and *the name of the proprietor thereof*, must both of them be engraved and printed, in order that it may be known when the exclusive right of the proprietor ceases, and

Sayer v. Dacey et al', 3. Wilson Co.

and when and against whom the person pirating may be guilty of offending against the act.

† *Sec. 79.* And it seems, that if it appear the date is anterior to the time when the person whose name the print bears became the proprietor of it, it is not within the protection of the act. Bonner v. Field, Sitt. Hil. Term, 1781.

† *Sec. 80.* But it seems to be undecided, whether on the assignment of a print the name of the inventor or the assignee ought to appear. Thompson v. Symonds, 5. Term Rep. 41.

† *Sec. 81.* It hath also been determined, that the assignee of a print may maintain an action on 17. Geo. 3. c. 57. against any person who pirates it, -and that in such action it is not necessary to produce the plate itself in evidence, but that the production of one of the prints taken from the original plate is sufficient; but the *date* must always appear on the print. Thompson v. Symonds and Another, 5. Term Rep. 41.

As to the *SIXTH POINT*, viz. How far callico printers have an exclusive right to their patterns.

† *Sec. 82.* By 27. Geo. 3. c. 38. s. 1. it is enacted, The proprietor of any original pattern for printing linens to have the sole right of printing it for two months from first publication; and whoever shall within that period print the same, to be liable to an action for damages.

“ That any person who shall invent, design, and print, or
 “ cause to be invented, designed, and printed, and become
 “ the proprietor of any new and original pattern or patterns
 “ for printing linens, cottons, callicoes, or muslins, shall
 “ have the sole right and liberty of printing and reprinting
 “ the same for the term of two months, to commence from
 “ the day of the first publishing thereof, which shall be truly
 “ printed with the name of the printer or proprietors at
 “ each end of every such piece of linen, cotton, callicoe, or
 “ muslin; and that if any callicoe-printer, linen-draper, or
 “ other person whatsoever, from and after the first day of
 “ *June* one thousand seven hundred and eighty-seven,
 “ within the time limited by this act, shall print, work, or
 “ copy, such original pattern or patterns, or cause to be
 “ printed, worked, or copied, such original pattern or
 “ patterns, or shall print or reprint, or cause to be printed
 “ or reprinted, any such pattern or patterns, and shall pub-
 “ lish, sell, or expose to sale, or in any other manner dispose
 “ of, or cause to be published, sold, or exposed to sale, or in
 “ any other manner disposed of, any linen, cotton, callicoe,
 “ or muslin, so printed without the consent of the proprie-
 “ tor or proprietors thereof first had and obtained in writing,
 “ signed by him or them respectively, in the presence of two
 “ or more credible witnesses, knowing the same to be so
 “ printed or reprinted without the consent of the proprietor
 “ or

“ or proprietors of such pattern, then every such proprietor
 “ or proprietors shall and may, if the offence be committed
 “ in *England*, by and in a special action upon the case, to
 “ be brought against the person or persons so offending,
 “ recover such damages as a jury on the trial of such action,
 “ or on the execution of a writ of enquiry thereon, shall
 “ give or assess, together with costs of suit, in which no
 “ wager of law, esoin, privilege, or protection, or more
 “ than one imparlance, shall be allowed; and if the offence
 “ be committed in *Scotland*, every such proprietor or pro-
 “ prietors shall and may, by an action to be brought before
 “ the court of session, or any judge competent to try civil
 “ causes within his bounds, recover such damages as the
 “ said court of session, or the said judge, shall give or assess,
 “ and for payment whereof decree shall be issued, with full
 “ costs of suit, on which all such execution shall pass as is
 “ competent by the laws and practice of *Scotland* in the like
 “ cases: provided nevertheless, that it shall and may be
 “ lawful for any person or persons who shall hereafter pur-
 “ chase any plate or plates, block or blocks, for printing,
 “ from the original proprietors thereof, to print, reprint,
 “ and expose for sale, or cause to be printed, reprinted, and
 “ exposed for sale, from the said plates or blocks, without
 “ being liable to any action on that account.”

but any per-
 son purcha-
 sing plates
 from the pro-
 prietors may
 print there-
 from.

Mode of pro-
 secuting for
 offences
 against this
 act.

† *Stat. 83.* By 27. Geo. 3. c. 38. s. 2. “ If any action
 “ or suit shall be commenced or brought against any person
 “ or persons whatsoever, for any offence committed against
 “ this act, the same shall be brought within the space of
 “ six months after so doing, and the defendant and defen-
 “ dants, in such action or suit, if brought in *England*, shall
 “ and may plead the general issue, and give the special
 “ matter in evidence; and if, upon such action or suit, a
 “ verdict shall be given for the defendant or defendants, or
 “ if the plaintiff or plaintiffs become nonsuited, or discon-
 “ tinue his, her, or their action or actions, then the defen-
 “ dant or defendants shall have and receive full costs; for
 “ the recovery whereof he shall have the same remedy as
 “ any other defendant or defendants in any other case hath
 “ or have by law; and if such action be brought in *Scot-*
 “ *land*, and not insisted in, or if the defender be assilzied,
 “ then the defender shall be entitled to full costs, for the
 “ recovery whereof he shall have the same remedy as here-
 “ inbefore is given to the pursuer.”

CHAPTER THE EIGHTIETH.

OF FORESTALLING, INGROSSING,

AND

REGRATING.

FOR the better understanding the nature of forestalling, ingrossing, and regrating, and other such like offences, I shall consider

1. How such offences are treated by the common law.
2. How by statute.

As to the FIRST POINT, *viz.* How forestalling, ingrossing, and regrating, are treated by the common law,

I shall consider,

1. What is esteemed an offence of this kind by the common law.
2. How such offence is punishable by the common law.

As to the first of these particulars, *viz.* What is esteemed an offence of this kind at common law.

Sec. 1. It is said, that all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false (a) rumours, or by (b) buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same (c) market, or by any other such like devices, are highly criminal at common law, and that all such offences anciently came under the general notion of forestalling, which included all kinds of offences of this nature.

(a) 43. Aff. 38.
3. Inst. 195,
196.
B. Indict-
ment, 4c.
Presentment
12.
(b) Crom. 18.
(c) Crom. 80.

Sec. 2. And surely there can be no attempt of this kind, but must be looked upon as a high offence against the publick, inasmuch as it so apparently tends to put a check upon trade, to the general inconvenience of the people, by putting it out of their power to supply themselves with a commodity,

OF FORESTALLING, INGROSSING, Bk. I.

commodity, without an unreasonable expence, which oftentimes proves extremely oppressive to the poorer sort, and cannot but give just cause of complaint to the richest.

3. Inst. 196.
Summary 150.

Sect. 3. But it hath been resolved, that any merchant, whether he be a subject or a foreigner, bringing victuals, or any other merchandize into the realm, may sell the same in gross, but that no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, because by such means the price will be enhanced, for the more hands any merchandize passeth through, the dearer it must grow, because every one will make his profit of it: and if such practices were allowable, a rich man might ingross into his hands a whole commodity, and then sell it at what price he should think fit; which is of such dangerous consequence, that the bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at the common law, whether any part thereof be sold by the ingrosser, or not.

C. Car. 231,
232.

3. Inst. 197.
Summary 152.

Sect. 4. And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf, perhaps for this reason, because by such means the market is in effect forestalled.

As to the second particular, *viz.* In what manner offences of this kind are punishable by the common law.

3. Inst. 195.

Sect. 5. It is said, that by an ancient statute the offender was to be grievously amerced for the first offence; for the second, to be condemned to the pillory; for the third, to be imprisoned; and for the fourth, to be compelled to abjure the vill. And there seems to be no doubt, but that at this day all offenders of this kind are liable to a fine and imprisonment, answerable to the heinousness of their offence, upon an indictment at common law.

As to the SECOND POINT, *viz.* In what manner these offences are treated by statute.

I shall consider what particular provisions have been made relating to this matter.

The particular provisions of this nature are five-fold.

1. The obliging all victuallers to sell at a reasonable price.

2. The

2. The allowing all foreigners free liberty of importing and selling victuals.

3. The giving the great officers of state a power to tax the price of victuals.

4. The prohibiting conspiracies to raise the price of victuals.

5. The prohibiting all forestalling, ingrossing, and regrating.

As to the first particular, *viz.* The obliging all victuallers to sell at a reasonable price.

Sect. 6. This depends upon 23. Edw. 3. c. 6. by which it is enacted, "That butchers, fishmongers, regrators, hostlers, brewers, bakers, poulterers, and other sellers of all manner of victuals, shall be bound to sell the same for a reasonable price, having respect to the price that such victuals shall be sold at in the places adjoining; so that such sellers have moderate gains, reasonably to be required, according to the distance of the place from whence the said victuals be carried; on pain to forfeit double the value, &c. And the chief officers of towns are required to see this statute executed, on pain of paying the treble value of the thing sold, &c."

How butchers felling wholesome meat are to be punished, vide 1. vol. Run-nington's statutes p. 187. c. 7. By 4. Hen. 7. c. 3. they shall not kill beasts in walled towns. By 21. Hen. 3. c. 8. they shall

not kill calves but within the time prescribed. By 22. Hen. 8. c. 6. they are prohibited from keeping tan-houses. By 1. Jac. 1. c. 22. they are not to kill calves under five weeksold. By 5. Ann. c. 34. §. 2. they are not to sell cattle to one another in London. By 7. Ann. c. 6. may sell dead calves or sheep.

As to the second particular, *viz.* The allowing all foreigners free liberty of importing and selling victuals.

Sect. 7. By 6. Rich. 2. c. 10. and 11. Rich. 2. c. 7. and 1. Hen. 4. c. 17. it is enacted, "That all manner of aliens, being of the amity of the king, coming into any town of the realm with fish, or other victual, shall be under the king's especial protection, and may cut their fishes and victuals in pieces, and in part, or in all, at retail, or in gross, as to them best shall seem, to sell and make their profit, &c."

Sect. 8. By 14. Hen. 6. c. 6. "If any man disturb any alien to sell his fish in gross, or at retail, in part or in whole, contrary to the above-mentioned ordinances, and thereof be duly attainted at the suit of the king, or of the party, he shall forfeit ten pounds, &c."

Vide also

24. Hen. 8. c. 3.

25. Hen. 8. c. 1.

27. Hen. 8. c. 3.

which enjoin that butchers meat shall be sold by the pound, &c.

But by 33.

Hen. 8. c. 12.

it may be sold

by weight or

otherwise.

As to the third particular, viz. The giving the great officers of state a power to tax the price of victuals.

Seft. 9. This depends upon 25. Hen. 8. c. 2. by which it is enacted, "That to remedy the frequent rise of the price of cheese, butter, capons, hens, chickens, and other necessary victuals for man's sustenance, by ingrossing and regrating the same; the lord chancellor and other high officers of state, &c. may, upon complaint of any inhancing of the prices of such victuals without ground or reasonable cause, in any part of the king's dominions, set and tax reasonable prices of such victuals: and that after proclamation made of such prices, all farmers, owners, broggers, and all other victuallers whatsoever, having or keeping any such victuals to the intent to sell, shall sell the same to such of the king's subjects as will buy them at such prices as shall be taxed by such proclamation, under the pains to be limited in the said proclamation."

Seft. 10. But by 25. Hen. 8. c. 2. "The officers of cities, boroughs, or towns-corporate, and all other persons having authority to set prices of such victuals, may set such prices in such manner as if the said act had not been made."

As to the fourth particular, viz. The prohibiting conspiracies to raise the price of victuals.

Vide 5. Eliz.

c. 4.

12. Mod. 248.

Seft. 11. This depends upon 2. and 3. Edw. 6. c. 15. by which it is enacted, "That if any butchers, brewers, bakers, poulterers, cooks, coster-mongers, or fruiterers, shall conspire, covenant, promise, or make any oaths, that they shall not sell their victuals but at certain prices; or if any artificers, workmen, or labourers, do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their works but at a certain price or rate; or shall not enterprize, or take upon them to finish what another hath begun, or shall do but a certain work in a day, or shall not work but at certain hours and times; every such person so conspiring, &c. shall forfeit for the first offence ten pounds; and if he pay not the same within six days, shall suffer twenty days imprisonment; and for the second offence shall forfeit twenty pounds, &c. and for the third, forty pounds, &c. And if any such conspiracy, covenant, or promise, be made by any society, brotherhood, or company, of any craft, mystery, or occupation of the victuallers above-mentioned, with the presence or consent of the more part

" of

“ of them, that then immediately upon such act of conspiracy, &c. over and besides the particular punishment before appointed, their corporation shall be dissolved; and that the said offences shall be determined at the assizes, sessions of the peace, or court leet.”

† *Stat. 12.* But by 2. Geo. 3. c. 14. “ No brewer, innkeeper, victualler, or other retailer of strong beer or ale, shall be sued, impleaded, or molested by indictment, information, popular action or otherwise, for advancing the price of strong beer or ale in a reasonable degree.”

† *Stat. 13.* And by 2. Geo. 3. c. 14. it is also enacted, “ That if any brewer, innkeeper, victualler, or retailer of beer or ale, shall mix, or cause, or suffer to be mixed in any vessel, tub, measure, or otherwise, any strong beer, ale, or strong worts, with any small beer or small worts, or with water, after the gauge of such strong beer, ale, or strong worts, shall have been taken by an officer of excise, he shall forfeit fifty pounds.”

As to the fifth particular, *viz.* The prohibiting all forestalling, ingrossing, and regrating.

† *Stat. 14.* This depended chiefly upon 3. and 4. Edw. 6. c. 21. 5. and 6. Edw. 6. c. 14. altered by 5. Eliz. c. 5. f. 13. 5. Eliz. c. 12. and 13. Eliz. c. 25. f. 31. But it is recited by 12. Geo. 3. c. 71. “ That it has been found by experience that the restraints laid by several statutes upon the dealing in corn, meal, flour, cattle, and sundry other sorts of victuals, by preventing a free trade in the said commodities, have a tendency to discourage the growth, and to enhance the price of the same; which statutes, if put in execution, would bring a great distress upon the inhabitants of many parts of this kingdom, and in particular upon those of the cities of *London* and *Westminster*; and thereupon it is enacted, that the 3. and 4. Edw. 6. c. 21. the 5. and 6. Edw. 6. c. 14. the 2. and 3. Philip and Mary, c. 3. the 5. Eliz. c. 5. and c. 12. the 15. Car. 2. c. 8. and so much of 5. Ann. c. 34. as relates to butchers selling cattle alive or dead, within *London* and *Westminster*, and within ten miles thereof, and also all acts for the better enforcement of the same, being detrimental to the supply of the labouring and manufacturing poor of this kingdom, shall be, and the same are hereby declared to be repealed.”

† *Stat. 15.* But as the statute of *Edward the Sixth* particularly describes the several offences of forestalling, ingrossing,

2. Burn's Jus-
tice 231.

OF FORESTALLING, INGROSSING, Bk. I.

and regrating, which still continue offences at common law, it may be of use to recite it, notwithstanding it is repealed, as it contains a parliamentary description of those offences.

An indictment on this clause must charge expressly that the goods bought were coming to the market to be sold.
1. Rolfe's Rep. 421.

† *Stat. 16.* By 5. and 6. Edw. 6. c. 14. s. 1. "Whoever shall buy, or cause to be bought, any merchandize, victual, or any other thing whatsoever coming by land or by water toward any market or fair to be sold in the same, or coming toward any city, port, haven, creek, or road, of this realm or *Wales*, from any parts beyond the sea to be sold, or make any bargain, contract, or promise, for the having or buying of the same, or any part thereof so coming as is aforesaid before the same shall be in the market, fair, city, or port, &c. ready to be sold, or shall make any motion by word, letter, message, or otherwise, to any person or persons for the enhancing of the price or dearer selling of any thing above-mentioned, or else dissuade, move, or stir any one coming to the market or fair to abstain or forbear to bring or convey any of the things above rehearsed to any market, city, or port, &c. to be sold, shall be deemed—A FORESTALLER."

Vide Owen 235.

† *Stat. 17.* By 5. and 6. Edw. 6. c. 14. s. 2. "Whosoever shall by any means regrate, obtain, or get into his hands or possession in any fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and do sell the same again in any fair or market holden in the same place, or within four miles thereof, shall be taken for—A REGRATOR."

† *Stat. 18.* By 5. and 6. Edw. 6. c. 14. s. 3. "Whosoever shall ingross or get into his hands by buying, contracting, or promise-taking, other than by demise, grant, or lease of land, or tithes, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victual whatsoever, within the realm of *England*, to the intent to sell the same again, shall be reputed—AN UNLAWFUL INGROSSER."

In the construction of the last-mentioned clauses the following opinions have been holden.

(a) 3. Inst. 195.
Sum. 152.
Cro. Car. 231.

Stat. 19. I. That (a) salt is a victual within the meaning of it, not only because it is of necessity of itself for the food and health of man, but also because it seasoneth and maketh wholesome beef, pork, and other victuals, in which

which respect it seemeth itself to come under the notion of victual, and seemeth to be so understood by the makers of 13. Eliz. 12. c. 25. as appears from par. 21. of that statute.

Secl. 20. II. That (a) such victual only as is necessary (a) 3. Inf.
for the food of man is within the purview of it; and there- 195.
fore that apples and cherries, and such-like fruits, are not Sum. 152.
within the intent of it; for the words are, corn or grain, Cro. Car. 232.
butter, cheefe, fish, or other dead victuals, which words are Owen 135.
said to import the same as if it had been said, or other dead Cro. Jac. 214.
victuals of like quality: also it is said, that there is not any thing prohibited within the statute, but what hath a proviso, how in some kind it might be brought; and therefore since there is not any such proviso for apples, that they never were intended to be restrained; and agreeably hereto it hath been holden, that neither (b) hops nor (c) malt are within the meaning of the statute.

(b) Cro. Car. 231.
(c) 3. Inf. 196.
Con. Ow. 135. 1. Roll. 12.

Secl. 21. III. That the buying of corn, with an intent to make (d) starch of it, and then to sell it, is not within the said clause, because it is not bought to be sold again in the same nature in which it was bought, but to be first altered by a trade or science, and then sold again. And for the like reason it seemeth to be the better (e) opinion, that the buying of corn in order to make meal of it, and then to sell it, is no way within the said clause; and that the buying of (f) barley with an intent to make it into malt, and then to sell it, had no need of the exception made for it in the said statute.

(d) Bridg. 5.
6.
Owen 135.

(e) Moore 595.
Cro. Car. 231.
Con. Ow. 135.

(f) C. Car. 231.
3. Inf. 196.
See c. 33. s. 15 18.
Con. Ow. 135.

Secl. 22. IV. That there is no necessity in an information or indictment grounded on the said clause for ingrossing any victual therein mentioned, to say (g) that the defendant did not come by it by a demise of land, &c. but that the defendant, if he have any such matter to alledge in his defence, may give it in evidence.

(g) 1. Jon. 157.

Secl. 23. V. That in every such information, &c. 2. Leon. 354
the words of the statute must be precisely pursued, and therefore that it is not sufficient to say, that the defendant bought so much corn, &c. because the words are, "shall ingross, or get into his hands, by buying, &c."

Secl. 24. And it is further enacted by the said statute of 5. and 6. Edw. 6. c. 14. par. 4, 5, 6. "That whoever shall offend in any of the things before recited, and be thereof duly convicted, shall for the first offence suffer imprisonment for two months, and forfeit the value of the goods so by him bought or had; and for the second offence
" shall

“ shall suffer imprisonment for one half year, and forfeit
 “ the double value of the goods, &c. and for the third
 “ offence shall be set on the pillory, and forfeit all his
 “ goods, and be committed to prison during the king’s
 “ pleasure.”

2. *Falk.* 317. *Sett.* 25. And from hence it seems clearly to follow,
 Cro. Car. 381. as well as from the general rules of law, that no information
 6. *Modern* 32. for any of the above-mentioned offences against the said
Vide *alkp* Cro. statute, can be good, without shewing in certain the quan-
 Car. 314. tity of the thing in relation to which the defendant is sup-
 1. *Roll.* 11, 12. posed to have incurred the penalty, not only because other-
 3. *Jones* 320. wise the judgment to be given on such an information can
 never be pleaded in bar of any other, because it cannot
 appear that both of them were brought for the same thing,
 but also because it cannot appear to the Court what forfeit-
 ure the defendant ought to incur, unless the extent of the
 offence, which is to be the measure of it, be specially set
 forth. And for these reasons it hath been adjudged, that an
 information for ingrossing corn, the quantity whereof is
 expressed by the word “ *cumulus*” only, is not good; yet it
 is said, that an indictment for ingrossing *magnam quantitatem*
frumenti is sufficient.

CHAPTER THE EIGHTIETH,

CONTINUED.

OF REGULATING THE PRICE OF VICTUALS, &c.

THE statutes against the offences of forestalling, ingrossing, and regrating, contained particular exceptions to the general restraints which they imposed. These exceptions related to corn, butter, cheese, cattle, beer, cyder, mum, fish, wine, oil, sugar, salt, fishmongers, victuallers, butchers, poulterers, badgers, drovers, lessors, shipping, and castles and towns-corporate. Of the foregoing catalogue those exceptions which relate to fish, fishmongers, victuallers, butchers, poulterers, lessors, shipping and castles, and towns-corporate, are repealed. But as the intention of the legislature both in enacting and in repealing these statutes, in accommodation to the emergencies of different periods of time, was to regulate the price of victuals, and to prevent them from being exorbitantly raised upon, or improperly introduced to the publick, by the respective dealers therein; I shall endeavour to collect the several statutes which relate to the regulation under the following arrangement.

1. As to The measure of corn.
2. As to Bread.
3. As to Beer.
4. As to Butter and Cheese.
5. As to Cattle and Butchers.
6. As to Fish.
7. As to Bacon and Pork.
8. As to Hay and Straw.
9. As to Fruit.

10. As to Honey and Wax.

11. As to The measure of Coals.

N. B. For the regulation of wood cut up for fuel vide 43. Eliz. c. 14. 9. Ann. c. 15. and 10. Ann. c. 6.

AND FIRST, As to the measure of corn.

† *Secl. 1.* By 22. Car. 2. c. 8. f. 2. "Whoever shall sell any sort of corn or grain, ground or unground, or any kind of salt, usually sold by the bushel, by any other than by *Winchester measure*, marked in his majesty's exchequer, and sealed as the act directs, containing eight gallons to the bushel, and no more or less, and the said bushel stricken even by the wood or brim of the same by the seller, shall forfeit forty shillings for every offence, on conviction, before one justice, by one witness; to be levied by the churchwardens, &c. by distress and sale; and in default, imprisonment till paid."

† *Secl. 2.* By 22. Car. 2. c. 8. f. 3. "If any mayor or other head officer shall knowingly permit the same, on conviction at the sessions, he shall forfeit five pounds, half to the prosecutor, and half to the poor by distress, or imprisonment till paid."

† *Secl. 3.* By 22. and 23. Car. 2. c. 12. "Whoever shall sell or buy any corn ground or unground, or salt by the bag without measuring, being thereunto required, or in any other manner than as above directed, and that without shaking of the said bushel or measure by the buyer, shall forfeit beside the above penalty, all the corn, grain, or salt bought or sold contrary to this act, or the value thereof, to the party complaining."

† *Secl. 4.* By 22 and 23. Car. 2. c. 12. "The proof shall lie upon the defendant to make it appear by the oath of one witness that he sold or bought the same lawfully, or, if he fail, he shall forfeit as before mentioned, and which shall be distributed by the justice, half to the poor and half to the informer."

Rex v. Major,
4 Term Rep.
750.

† *Secl. 5.* It has been decided, that the object of the legislature in passing the above statutes was to establish throughout the kingdom one measure only, and therefore that they virtually abolish the use of those *customary measures* which were used in

in particular places; and that it is illegal to sell corn by any other measure than the *Winchester measure*.

For the mode by which the averaged price of corn is to be ascertained, vide 30. Geo. 3. c. 39. and for the same in London and Essex, 21. Geo. 3. c. 50. For regulations respecting its importation, 22. Car. 2. c. 13. 15. Car. 2. c. 7. 5. Geo. 2. c. 12. 6. Geo. 3. c. 17. 13. Geo. 3. c. 43. 16. Geo. 3. c. 39. 18. Geo. 3. c. 25. 19. Geo. 3. c. 29. For regulating its exportation, vide 1. W. and M. c. 12. 1. Geo. c. 7. 11. Geo. 2. c. 22. 13. Geo. 3. c. 43. L. 5. 14. Geo. 3. c. 64. 14. Geo. 3. c. 5. and 21. and 26. 16. Geo. 3. c. 37. 18. Geo. 5. c. 16.

SECONDLY, As to Bread, I shall consider the several statutes as they relate,

1. To the assize and making of wheaten and household bread,
2. As to the making bread when no assize is set,
3. As to the making of standard wheaten bread.

As to the first particular, viz. The assize and making of wheaten bread.

† Sect. 6. By 31. Geo. 2. c. 29. f. 2. "The Court, or persons herein authorized to set the assize and weight of bread, and the price for the same, shall so do as often as they shall think proper; and that in every assize, respect shall be had to the price which the grain, meal, or flour, shall bear in the public markets, in or near the place for which such assize shall be set; making reasonable allowance to makers for their charges and profit."

† Sect. 7. By 31. Geo. 2. c. 29. f. 3. "Where an assize shall be set, no person shall there sell bread, except wheaten and household, otherwise brown bread, and such other sort as shall be publicly allowed by the Court, or persons aforesaid; but where it hath been usual to make bread with the meal of rye, barley, oats, beans, or pease, or with the meal of any such different sorts of grain mixed together, or the Court or persons shall allow such bread to be made, such bread shall and may be there made and sold; and offenders on conviction by confession, or the oath of one witness, before any magistrate within his jurisdiction, shall forfeit not exceeding forty nor less than twenty shillings."

An assize set, no other sort of bread (wheaten and household excepted) to be made for sale, under penalty of forfeiting forty shillings, nor less than twenty shillings.

† Sect. 8. By 31. Geo. 2. c. 29. f. 4. "The assize and weight of the several sorts of bread for sale, and the price, shall be ascertained by the Assize and price to be according to the Tables."

OF REGULATING THE Bk. I.

"shall be set and ascertained according to the following tables marked No. I. and 2."

N. B. Part the first, or the affize table, contains the price of the bushel of wheat Winchester measure, from 2s. 9d. to 14s. 6d. the bushel, the allowance of the magistrates or justices to the baker for baking being included: so that (for example) if the price of wheat in the market is 5s. the bushel, and the magistrates allow 1s. 6d. the bushel to the baker for baking, find 6s. 6d., and even therewith will be found the weights of the several loaves; but if the price in the market is 3s., and the allowance 1s., then the weight of the loaves will be found even with 4s.

N. B. Part the second, or the priced table, contains the price of the bushel of wheat, Winchester measure, from 2s. 9d. to 14s. 6d. the bushel, the allowance for baking being included; and also the prices of the peck, half peck, and quartern, wheaten and household loaves: so that (for example) if the price of wheat in the market is 5s. the bushel, and the magistrates allow 1s. 6d. for baking, find 6s. 6d., and even therewith will be found the prices of the several loaves.

It was thought sufficient to insert the weight of a penny-loaf, as the weight of all other loaves may thereby be easily calculated.

T A B L E. No. I.

OF BREAD MADE OF WHEAT.

Price of the bush- el of wheat & baking.	Weight.				Prized Bread.							
	The penny loaf.				Quartern loaf.		Half peck loaf.		Peck loaf.			
	Wheaten.	Household.	Wheaten.	Household.	Wheaten.	Household.	Wheaten.	Household.	Wheaten.	Household.	Wheaten.	Household.
s. d.	oz.	dr.	oz.	dr.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
2 9	22	4	19	4	0 3 $\frac{1}{2}$	0 2 $\frac{1}{2}$	0 6 $\frac{1}{2}$	0 4 $\frac{1}{2}$	1 0 $\frac{1}{2}$	0 9 $\frac{1}{2}$	0 9 $\frac{1}{2}$	0 9 $\frac{1}{2}$
3 0	20	4	27	1	0 3 $\frac{1}{2}$	0 2 $\frac{1}{2}$	0 7	0 5 $\frac{1}{2}$	1 1 $\frac{1}{2}$	0 10 $\frac{1}{2}$	0 10 $\frac{1}{2}$	0 10 $\frac{1}{2}$
3 3	18	9	25	4	0 3 $\frac{1}{2}$	0 2 $\frac{1}{2}$	0 7 $\frac{1}{2}$	0 5 $\frac{1}{2}$	1 3	0 11	0 11	0 11
3 6	17	6	23	3	0 4	0 3	0 8	0 6	1 4	1 0	1 0	1 0
3 9	16	6	21	6	0 4 $\frac{1}{2}$	0 3 $\frac{1}{2}$	0 8 $\frac{1}{2}$	0 6 $\frac{1}{2}$	1 5	1 1	1 1	1 1
4 0	15	4	20	4	0 4 $\frac{1}{2}$	0 3 $\frac{1}{2}$	0 9	0 6 $\frac{1}{2}$	1 6 $\frac{1}{2}$	1 1 $\frac{1}{2}$	1 1 $\frac{1}{2}$	1 1 $\frac{1}{2}$
4 3	14	4	19	1	0 4 $\frac{1}{2}$	0 3 $\frac{1}{2}$	0 9 $\frac{1}{2}$	0 7 $\frac{1}{2}$	1 7 $\frac{1}{2}$	1 2 $\frac{1}{2}$	1 2 $\frac{1}{2}$	1 2 $\frac{1}{2}$
4 6	13	9	17	15	0 5	0 3 $\frac{1}{2}$	0 10 $\frac{1}{2}$	0 7 $\frac{1}{2}$	1 8 $\frac{1}{2}$	1 3 $\frac{1}{2}$	1 3 $\frac{1}{2}$	1 3 $\frac{1}{2}$
4 9	12	12	17	1	0 5 $\frac{1}{2}$	0 4	0 10 $\frac{1}{2}$	0 8	1 0 $\frac{1}{2}$	1 4 $\frac{1}{2}$	1 4 $\frac{1}{2}$	1 4 $\frac{1}{2}$
5 0	12	1	16	6	0 5 $\frac{1}{2}$	0 4 $\frac{1}{2}$	0 11 $\frac{1}{2}$	0 8 $\frac{1}{2}$	1 11	1 5	1 5	1 5
5 3	11	9	15	7	0 6	0 4 $\frac{1}{2}$	1 0	0 9	2 0	1 6	1 6	1 6
5 6	11	2	14	10	0 6 $\frac{1}{2}$	0 4 $\frac{1}{2}$	1 0 $\frac{1}{2}$	0 9 $\frac{1}{2}$	7 1	1 7	1 7	1 7

Price

Price of the bush- el of wheat and baking.	Weight.		Prized-Bread.											
			The penny loaf.				Quartern loaf.				Half peck.			
	s. d.		Wheaten. oz. dr.	Household oz. dr.			Wheaten. s. d.	Household s. d.			Wheaten. s. d.	Household s. d.	Wheaten. s. d.	Household s. d.
5 9			10 8	14 4			0 6 $\frac{1}{2}$	0 5			1 1 $\frac{1}{4}$	0 9 $\frac{1}{4}$	2 2 $\frac{1}{2}$	1 7 $\frac{1}{2}$
6 0			10 2	13 9			0 7	0 5			1 1 $\frac{1}{2}$	0 10 $\frac{1}{4}$	2 3 $\frac{1}{2}$	1 8 $\frac{1}{2}$
6 3			9 11	13 1			0 7 $\frac{1}{4}$	0 5 $\frac{1}{2}$			1 1 $\frac{3}{4}$	0 10 $\frac{3}{4}$	2 4 $\frac{1}{2}$	1 9 $\frac{1}{2}$
<hr/>														
6 6			9 4	12 10			0 7 $\frac{1}{2}$	0 5 $\frac{3}{4}$		1 3	0 11	2 6	1 10	
6 9			9 0	12 1			0 7 $\frac{3}{4}$	0 5 $\frac{3}{4}$		1 3 $\frac{1}{2}$	0 11 $\frac{1}{2}$	2 7	1 11	
7 0			8 11	11 9			0 8	0 6		1 4	1 0	2 8	2 0	
<hr/>														
7 3			8 7	11 2			0 8 $\frac{1}{2}$	0 6 $\frac{1}{4}$		1 4	1 0 $\frac{1}{2}$	2 9	2 1	
7 6			8 3	10 11			0 8 $\frac{1}{2}$	0 6 $\frac{1}{2}$		1 5 $\frac{1}{2}$	1 1	2 10	2 2	
7 9			7 14	10 6			0 8 $\frac{1}{2}$	0 6 $\frac{1}{2}$		1 5	1 1 $\frac{1}{2}$	2 11 $\frac{1}{4}$	2 2 $\frac{1}{2}$	
<hr/>														
8 0			7 10	10 2			0 9 $\frac{1}{2}$	0 6 $\frac{3}{4}$		1 6 $\frac{1}{4}$	1 1 $\frac{3}{4}$	3 0 $\frac{1}{2}$	2 3 $\frac{1}{2}$	
8 3			7 5	9 15			0 9 $\frac{1}{2}$	0 7		1 7	1 2	3 2	2 4	
8 6			7 2	9 9			0 9 $\frac{1}{2}$	0 7 $\frac{1}{4}$		1 7 $\frac{1}{2}$	1 2 $\frac{1}{2}$	3 3	2 5	
<hr/>														
8 9			6 15	9 4			0 10	0 7 $\frac{1}{2}$		1 8	1 3	3 4	2 6	
9 0			6 13	8 15			0 10 $\frac{1}{4}$	0 7 $\frac{3}{4}$		1 8 $\frac{1}{2}$	1 3 $\frac{1}{2}$	3 5	2 7	
9 3			6 9	8 12			0 10 $\frac{1}{4}$	0 8		1 9	1 3 $\frac{3}{4}$	3 6 $\frac{1}{2}$	2 7 $\frac{1}{2}$	
<hr/>														
9 6			6 7	8 8			0 10 $\frac{3}{4}$	0 8 $\frac{1}{2}$		1 9 $\frac{1}{2}$	1 4 $\frac{1}{4}$	3 7 $\frac{1}{2}$	2 8 $\frac{1}{2}$	
9 9			6 4	8 5			0 11	0 8 $\frac{1}{2}$		1 10 $\frac{1}{4}$	1 4 $\frac{3}{4}$	3 8 $\frac{1}{2}$	2 9 $\frac{1}{2}$	
10 0			6 1	8 2			0 11 $\frac{1}{2}$	0 8 $\frac{1}{2}$		1 11	1 5	3 10	2 10	
<hr/>														
10 3			5 15	7 15			0 11 $\frac{3}{4}$	0 8 $\frac{3}{4}$		1 11 $\frac{1}{2}$	1 5 $\frac{1}{2}$	3 11	2 11	
10 6			5 13	7 12			1 0	0 9		2 0	1 6	4 0	3 0	
10 9			5 11	7 9			1 0 $\frac{1}{4}$	0 9 $\frac{1}{4}$		2 0 $\frac{1}{2}$	1 6 $\frac{1}{2}$	4 1	3 1	
<hr/>														
11 0			5 9	7 5			1 0	0 9		2 1	1 7	4 2	3 2	
11 3			5 6	7 3			1 0 $\frac{1}{4}$	0 9 $\frac{1}{4}$		2 1 $\frac{1}{4}$	1 7	4 3 $\frac{1}{4}$	3 2 $\frac{1}{4}$	
11 6			5 5	7 1			1 1	0 10		2 2	1 7	4 4 $\frac{1}{2}$	3 3 $\frac{1}{2}$	
<hr/>														
11 9			5 2	6 15			1 1 $\frac{1}{2}$	0 10		2 3	1 8	4 5	3 4	
12 0			5 1	6 13			1 1 $\frac{3}{4}$	0 10 $\frac{1}{4}$		2 3 $\frac{1}{2}$	1 8 $\frac{1}{2}$	4 7	3 5	
12 3			4 15	6 10			1 2	0 10 $\frac{1}{2}$		2 4	1 9	4 8	3 6	
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12 6			4 14	6 8			1 2 $\frac{1}{4}$	0 10 $\frac{3}{4}$		2 4 $\frac{1}{2}$	1 9 $\frac{1}{2}$	4 9	3 7	
12 9			4 13	6 5			1 2 $\frac{1}{2}$	0 11		2 5	1 10	4 10	3 8	
13 0			4 11	6 4			1 3	0 11 $\frac{1}{4}$		2 5 $\frac{3}{4}$	1 10 $\frac{1}{4}$	4 11 $\frac{1}{2}$	3 8 $\frac{1}{2}$	
<hr/>														
13 3			4 9	6 3			1 3 $\frac{1}{2}$	0 11 $\frac{1}{2}$		2 6 $\frac{1}{2}$	1 10 $\frac{1}{2}$	5 1	3 9	
13 6			4 8	6 1			1 3 $\frac{1}{2}$	0 11 $\frac{1}{2}$		2 7	1 11	5 2	3 0	
13 9			4 7	5 15			1 3 $\frac{3}{4}$	0 11 $\frac{3}{4}$		2 7 $\frac{1}{2}$	1 11 $\frac{1}{2}$	5 3	3 11	
<hr/>														
14 0			4 5	5 13			1 4	1 0		2 8	2 0	5 4	4 0	
14 3			4 4	5 11			1 4	1 0 $\frac{1}{4}$		2 8 $\frac{1}{2}$	2 0 $\frac{1}{4}$	5 5	4 1	
14 6			4 3	5 9			1 5	1 0 $\frac{1}{2}$		2 9	2 1	5 6	4 2	

Note, The wheaten loaves are three-fourths of the weight of the household loaves; and if the magistrates or justices shall think fit to allow of any white loaves of the price of one penny or two-pence, they are to weigh at all times three-fourths of the weight of the wheaten loaves of the same price.

Note, The prices of the household loaves are always three-fourths of the prices of the wheaten loaves; and where it shall be thought proper to allow of half quartern loaves, the prices of such loaves (if sold singly) are to be half a farthing higher than is allowed by this Table, when it shall so happen that the farthing is split.

And magistrates and justices within their respective jurisdictions being to set the assize and fix the price of the several loaves of bread having respect to the price which the grain, meal, or flour shall bear in the markets, but no provision being made, how they should know what price the respective sorts of meal and flour should be esteemed to bear in proportion to the price of wheat, they are therefore to take notice that the peck loaf of each sort of bread is to weigh, when well baken, seventeen pounds six ounces avoirdupois, and the rest in proportion; and every sack of meal or flour is to weigh two hundred weight two quarters nett; from every sack of meal or flour there ought to be produced, on the average, twenty such peck loaves of bread; and by observing the said rule, magistrates and justices may at all times know if the baker had more or less than the allowance they intend to give him.

TABLE II.

OF BREAD MADE OF SEVERAL GRAINS.

The first column contains the prices of the bushel of grain, baking included; which prices are adapted to as to serve either for the Winchester bushel of rye, of barley, of oats, of beans, of maflin *alias* miscellany, consisting of two-thirds wheat and one-third rye; the price of either of which bushels in the market being known, the magistrates are to add the intended allowance thereto; the amount of which being found in column No. 1. the weight which the several loaves ought to be of, will be found under column No. 2. and the price of the respective peck loaves (which are to weigh 17lb. 6 oz. each) under No. 1.

Note, Where bread is allowed at any time to be made for sale of pease only, the assize and price thereof are to be set and fixed from the bean columns; and where bread is ordered to be made for sale of a coarse sort of maflin or miscellany grain, consisting of one-third rye, one-third barley, and one-third either pease or beans, the assize and price thereof are to be set and fixed from the barley columns.

Note also, That this Table is framed for bread to be made of the whole produce of the said several grains, except the bran or hull thereof only.

No. 1.										No. 2.										No. 3.												
Price of the bushel and baking.										Weight of the penny loaf.										Price of the peck loaf.												
s.		d.		oz.		dr.		oz.		dr.		oz.		dr.		s.		d.		oz.		dr.		s.		d.		oz.		dr.		
1	0	62	8	67	8	31	4	83	12	70	0	0	4	1	0	0	4	1	0	9	0	3	1	0	4	0	5	0	6	0	6	
1	3	50	0	54	0	25	0	67	0	56	0	0	5	1	0	0	5	1	0	11	0	4	0	5	0	5	0	6	0	6		
1	6	41	10	45	0	24	14	55	12	46	10	0	6	1	0	0	6	1	0	1	1	0	5	0	6	0	6	0	6	0	6	
1	9	35	11	38	9	17	14	47	14	40	0	0	7	1	0	0	7	1	0	3	1	0	5	1	0	7	0	7	0	7	0	7
2	0	31	4	33	12	15	10	41	14	35	0	0	8	1	0	0	8	1	0	5	1	0	6	1	0	8	0	8	0	8	0	8
2	3	27	13	30	0	13	14	37	4	31	2	0	10	0	0	0	10	0	0	9	1	0	7	1	0	9	0	9	0	9	0	9
2	6	25	0	27	0	12	8	33	8	28	0	0	11	0	0	0	11	0	0	1	10	0	8	1	0	10	0	10	0	10	0	10
2	9	22	11	24	9	11	6	30	7	25	6	1	0	0	0	0	11	1	0	2	1	0	9	1	0	11	0	11	0	11	0	11
3	0	20	13	22	8	10	7	27	14	23	5	1	1	1	0	1	1	0	2	2	1	10	1	0	1	0	1	0	1	0	1	0
3	3	19	4	20	12	9	10	25	12	1	8	1	2	1	1	1	2	1	1	2	4	1	10	1	1	1	1	1	1	1	1	1
3	6	17	13	19	4	8	15	23	15	20	0	1	3	1	1	1	3	1	1	2	6	1	11	1	1	1	1	1	1	1	1	1
3	9	16	11	18	0	8	5	22	5	18	10	1	4	1	1	1	4	1	1	3	2	1	10	1	1	1	1	1	1	1	1	1
4	0	15	10	16	14	7	13	20	15	17	8	1	5	1	1	1	5	1	1	4	2	1	11	1	1	1	1	1	1	1	1	1
4	3	14	12	15	14	7	6	19	11	16	8	1	6	1	1	1	6	1	1	5	3	0	1	2	1	1	1	1	1	1	1	1
4	6	13	14	15	0	6	15	18	10	15	9	1	8	1	1	1	7	1	1	3	2	1	1	3	1	1	1	1	1	1	1	1
4	9	13	2	14	4	6	9	17	11	14	17	1	8	1	1	1	8	1	1	3	5	1	1	3	1	1	1	1	1	1	1	1
5	0	12	8	13	8	6	4	16	12	14	0	1	10	1	1	1	9	1	1	3	8	1	1	4	1	1	1	1	1	1	1	1
5	3	11	14	12	14	5	15	15	13	5	1	1	11	1	1	1	10	1	1	3	11	1	1	5	1	1	1	1	1	1	1	1
5	6	11	5	12	4	5	11	15	3	12	11	2	0	1	1	1	11	1	1	4	1	1	1	7	1	1	1	1	1	1	1	1
5	9	10	13	11	12	5	7	14	9	12	2	2	1	1	1	1	2	0	1	4	3	1	1	7	1	1	1	1	1	1	1	1
6	0	10	6	11	4	5	3	13	15	11	10	2	2	1	1	1	2	1	1	4	5	1	1	8	1	1	1	1	1	1	1	1
6	3	10	0	10	13	5	0	13	6	11	3	2	3	1	1	1	2	2	1	4	7	1	1	8	1	1	1	1	1	1	1	1
6	6	9	10	10	6	4	13	12	14	10	12	2	5	1	1	1	2	3	1	4	9	1	1	9	1	1	1	1	1	1	1	1
6	9	9	4	10	0	4	10	12	6	10	6	2	6	1	1	1	2	4	1	5	0	1	1	10	1	1	1	1	1	1	1	1
7	0	8	15	9	10	4	7	11	15	10	0	2	7	1	1	1	2	5	1	5	1	1	1	1	1	1	1	1	1	1	1	1

↑ Set.

Affize to be
set in averdu-
poize weight,
directed by
the tables.

† *Stat. 9.* By 31. Geo. 2. c. 29. s. 5. " Every affize shall be set in averdupoize weight, of sixteen ounces to the pound, and not troy weight, and in the several proportions directed by the Tables, or as near as may be: and the said Tables shall extend as well to bread made with wheat mixed with other grain, as to bread made with other grains than wheat, publicly licensed to be made into bread; and the affize of all such mixed bread shall be set and ascertained as near as may be to the said Tables."

Return to be
made weekly
to the court of
aldermen of
London, of the
prices which
the grain sell
for, to be en-
tered in a book
in the town
clerk's office;
the affize to
continue till a
new affize be
set.

† *Stat. 10.* By 31. Geo. 2. c. 29. s. 6. " The prices which the several kinds of grain, meal, and flour, shall, *bona fide*, sell for in *London*, in open and public market, shall be certified on oath, on some certain day in every week, as the mayor and aldermen shall appoint, by the meal weighers of *London*, or such persons as the said court shall direct; and shall also on some certain day in every week, to be appointed by the said court, be entered by such persons in writing, and kept at the town clerk's office in the said city: and the next day after every such price shall be so certified, the affize and weight of all sorts of bread to be sold within the limits of their jurisdiction, and the price to be paid for the same, shall be set by the said court of mayor and aldermen, if the said court shall then sit, and if not, then by the mayor of the said city; and that the affize so set in *London* shall take place as the said court shall order, and be in force for *London* and the liberties thereof, and the weekly bills of mortality (the city of *Westminster* and liberties thereof, the borough of *Southwark*, and weekly bills of mortality in the county of *Surrey* excepted), until another affize in *London* shall be set; and that the affize so set, shall with all convenient speed be made public in such manner as the said court of mayor and aldermen shall direct: but before any advance or reduction shall in any week be made by the said court or the mayor in the price of bread, the meal weighers or other persons shall leave in writing at the common hall of the *Company of Bakers* in *London*, a copy of every return of the price of grain, meal, and flour, which they shall make and enter in such book as aforesaid, some time of the same day on which such meal weighers or other persons shall make every such return and entry; to the intent that the said *Company of Bakers* may the morning of the next day after every such return and entry made, and before any affize shall be set, have an opportunity to offer to the mayor and aldermen, and if such court shall then sit, to the mayor, all such objections as the said *Company of Bakers* shall think fit against any advance or reduction being that day made."

The meal-
weighers are
to leave at the
Bakers Hall a
copy of their
returns.

† *Stat.*

† *Stat. 11.* By 31. Geo. 2. c. 29. f. 7. "The court of mayor and aldermen of every other city, and where there shall be no such court, or when the same shall not sit, the chief magistrate of every other city; and in towns corporate, or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate, or two justices where there shall be no such mayor, bailiffs, aldermen, or chief magistrates; shall severally and respectively cause the respective prices which the several sorts of grain, meal, and flour, proper to make bread allowed to be made in every such other city, town corporate, borough, town, or place, shall, *bonâ fide*, sell for, in the respective public markets in or near to every such other place, to be certified upon oath, unto such magistrates as aforesaid, in such manner in every week, as any such respective court or magistrates shall appoint; and the price so certified shall be entered by the person who shall certify the same in some book kept by him for that purpose; and within two days after the assize and weight of bread shall be set by the persons and in the jurisdictions as aforesaid respectively, the same shall take place on such day in every week, and be in force for such time, not exceeding seven days from the setting of every such assize, and shall be made public in such manner as such magistrates as aforesaid shall within their respective jurisdictions direct."

The court and magistrates, &c. in other cities, towns, and boroughs, may cause returns to be made; the prices to be entered and certified; the assize to be set within two days after; and to continue (not exceeding seven days).

† *Stat. 12.* By 31. Geo. 2. c. 29. f. 8. "If any two justices of counties shall set an assize, it shall be lawful for them to cause the price which grain, meal, and flour, fit to make bread, shall, *bonâ fide*, sell for in the respective public corn markets, in or near the place or places respectively, to be certified on oath (a) to them at their respective places of abode, in any such county, on such day in every week as they shall appoint, by the respective clerks of the market, or such other person as any such two justices shall appoint; and that the price of grain, meal, and flour, so returned, shall be entered by the person who shall return the same in some book kept by him for that purpose; and within two days after the price and assize of bread may be by any two justices set for any time not exceeding fourteen days from every setting thereof; and the assize which shall be so set, shall commence and be in force at such time, and be made public (b) in such place or places, for which the same shall be so set, as the said justices shall direct."

Two or more justices may set an assize and cause returns to be made.

(a) For the form of the certificate, which must be signed with the name of the person who returns it, vide the act, sect. 11. and 1. Burn. 243.

(b) For the form of the publication, vide the act, sect. 12. and 1. Burn. 244.

† *Stat. 13.* By 31. Geo. 2. c. 29. f. 9. "Any baker shall have liberty, the day after every return shall be made and entered

Bakers may see the returns that they may object to the assize.

"entered in the book, to see the entry without paying any thing, to the intent that he may have an opportunity on the said next day to offer to any such court, mayor, bailiffs, aldermen, or other chief magistrate or magistrates or justices as aforesaid, before any such assize shall be set, such objections as any such baker can reasonably make against any advance or reduction being made."

Not liable to fees.

† *Stat. 14.* By 31. Geo. 2. c. 29. § 10. "No maker of bread for sale shall pay any fee or reward for any assize of bread being set, altered, or published."

Half peck and quartern loaves to weigh, and be sold, in due proportion to the peck loaf.

† *Stat. 15.* By 31. Geo. 2. c. 29. § 11. "The half peck and quarter of a peck loaves of wheaten and household bread are to weigh in proportion to the weight a peck loaf of wheaten or household bread ought to weigh, and are to be sold according to the price a peck loaf of wheaten or household bread respectively is to be sold; and whenever any bread shall be ordered to be made with the meal or flour of rye, barley, oats, peas, or beans, either alone or mixed, the assize of such bread shall be made public in such manner as the said magistrate, who shall set such assize, shall direct."

Where bread of a certain denomination and value shall be ordered.

† *Stat. 16.* By 31. Geo. 2. c. 29. § 13. "In places where any fixpenny, twelpenny, and eighteenpenny loaves shall be allowed, no peck, half peck, or quarter of a peck loaves shall be permitted at the same time to be there made or sold, upon pain of any sum not exceeding forty nor less than twenty shillings."

Sessions may fix the jurisdiction of any place within a certain district.

† *Stat. 17.* By 31. Geo. 2. c. 29. § 14. "If the justices of any county or division shall, at sessions, think fit to fix, that any hundred or other place in such county or division ought to be considered as in any one particular hundred, riding, or division of such county, riding, or division, in order that the assize of bread for such particular hundred or place may extend to or comprize such other hundred or place, it shall be lawful for them so to do; but by so doing no justice shall be excluded from acting as a justice in any hundred, riding, or division of any such county in which any such particular towns, districts, or places shall lie, or the assize for them shall be set."

Entry to be made by every clerk of the market, &c.

† *Stat. 18.* By 31. Geo. 2. c. 29. § 15. "An entry shall be made by every clerk of the market, or other person, of every return, and of the rate at which the price, assize, and weight of bread shall be set or fixed within the jurisdiction of every such clerk of the market, or other persons, which any inhabitant shall inspect without fee."

† *Stat.*

† *Stat.* 19. By 31. Geo. 2. c. 29. s. 16. "After an affize shall be set, no alteration shall be made therein in any subsequent week, either to rise the same higher, or to sink the same lower, unless the price of wheat or other grain shall be returned as having rose three-pence each bushel more than the last return made, or having fallen three-pence each bushel lower than the said last return; no provision being made by the said affize-tables for altering any affize upon such an event."

No alteration, unless price of grain shall vary 3d. in the bushel from the last return.

† *Stat.* 20. By 31. Geo. 2. c. 29. s. 17. "If any person appointed to certify or return the price of grain, meal, and flour, shall neglect any matters required to be done by him, or shall designedly make any false certificate or return; or if any peace-officer shall neglect to obey any warrant in writing delivered to him under the hand and seal of any magistrate, or to do any other act requisite to be done by him, shall forfeit not exceeding five pounds, nor less than twenty shillings."

Forfeiture of any meal-weigher, clerk, &c. who shall neglect his duty, and any peace-officer who shall disobey.

† *Stat.* 21. By 31. Geo. 2. c. 29. s. 18. "In case any dealers in corn, grain, meal, or flour, on reasonable request by the meal-weighers of London, or by the clerks of the markets, or other persons appointed to give in and certify the prices of grain, meal, and flour, shall refuse to make known the true real prices the several sorts of grain, meal, and flour, shall be, *bonâ fide*, bought at, or sold, by or for him, her, or them respectively, at any corn-market within the jurisdiction of any such persons aforesaid, or shall knowingly give in any false or untrue price of any grain, meal, or flour, bought or sold, or agreed so to be, or any price which hath been made by any deceitful means, on being convicted by the oath of one witness, or solemn affirmation, or on confession, shall forfeit not exceeding ten pounds, nor less than forty shillings."

Penalty for refusing to disclose the true prices of grain, meal, and flour, or for giving in a false or collusive price.

† *Stat.* 22. By 31. Geo. 2. c. 29. s. 19. "If any such court, magistrate, or justices, as aforesaid, who shall have ordered any return, shall, within three days after such return made, suspect that the same was not truly and *bonâ fide* made, it shall be lawful to summon before them respectively any person who shall have bought or sold, or shall be suspected to have bought or sold, or agreed to buy or sell, any grain, meal, or flour, or who shall be thought to be likely to give any information concerning the premises, and to examine them respectively upon their several oaths touching the rates and prices the several sorts of grain, meal, and flour, or any of them, were there really and *bonâ fide* bought at or sold for, or agreed so to be by him,

What shall be done where any false return shall be suspected.

Party not
obliged to tra-
vel above five
miles.

"him, her, or them respectively, at any time within seven
"days preceding the summoning: and if any person so
"summoned shall neglect to appear (and proof be made on
"oath of such summons having been duly served), or if any
"person so summoned shall appear, and neglect or refuse
"to answer lawful questions, on being convicted by the
"oath of one witness, or confession, before any such court,
"magistrate, or justices, shall forfeit not exceeding ten
"pounds, and not less than forty shillings: and if any per-
"son, so examined on oath, shall forswear himself, such per-
"son shall be liable to be prosecuted as for perjury, by in-
"dictment or information, provided that the party so sum-
"moned be not obliged to travel above five miles from the
"place of his abode."

Bakers to
make the
bread of such
weight, good-
ness, and
price, as shall
be directed.

† *Stat. 23.* By 31. Geo. 2. c. 29. s. 20. "Whenever any
"court as aforesaid, magistrate, or justices, shall order any
"bread to be made with the meal of any other grain than
"wheat, or to be mixed with wheat, or to be made with
"the meal of any other sort of grain, either separate or
"mixed together, all persons shall make bread for sale with
"such mixed meal, or of such weight and goodness, and
"shall sell the same at such prices, as such court, magistrates,
"or justices, shall direct, upon pain of any sum not ex-
"ceeding five pounds, nor less than forty shillings."

No adultera-
tion or mix-
ture, except
the genuine
meal or flour,
salt, water,
eggs, milk,
yeast, and
barm, or such
leaven as shall
be occasion-
ally allowed.

† *Stat. 24.* By 31. Geo. 2. c. 29. s. 21. "The several
"sorts of bread shall be well made, according to the good-
"ness of the several sorts of meal whereof the same ought
"to be made; and no allum, or any mixture or in-
"gredient whatsoever (except only the genuine meal, com-
"mon salt, pure water, eggs, milk, yeast, and barm, or
"such leaven as shall be allowed by the court or person who
"shall have set an assize of bread where any such leaven
"shall be used; and where no such assize shall have been
"set, then such leaven as any magistrate or justice shall al-
"low), shall be used in making dough or any bread to
"be sold, upon pain that every person (other than a servant
"or journeyman) who shall knowingly offend, and be con-
"victed by confession, or by oath of one witness, before
"any such magistrate or justice, shall forfeit not exceeding
"ten pounds, and not less than forty shillings, or shall be
"committed to the house of correction, or some prison of
"the county or place where the offence shall be, to hard la-
"bour, not exceeding one calendar month, nor less than
"ten days. And if any servant shall offend, he shall forfeit
"not exceeding five pounds, and not less than twenty shil-
"lings, or be apprehended and committed as aforesaid; and
"it shall be lawful for the magistrate or justice before whom
"any

"any such offender shall be convicted, out of the money forfeited, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the county, city, or place, where any such offence shall have been committed."

† Sect. 25. By 31. Geo. 2. c. 29. f. 22. "No person shall put into any corn, meal, or flour, ground, dressed, boiled, or manufactured for sale, any mixture or thing whatsoever, or shall knowingly sell, offer, or expose to or for sale, any meal of one sort of grain as or for the meal of any other sort of grain, or any thing as or for or mixed with the meal of any grain which shall not be the real and genuine meal of the grain the same shall import to be, upon pain of forfeiting any sum not exceeding five pounds, nor less than forty-shillings."

The penalty of adulterating corn, meal, or flour.

† Sect. 26. By 31. Geo. 2. c. 29. f. 23. "No person shall put into any bread made for sale any mixture of meal of any other sort of grain than of the grain the same shall import to be and allowed to be made of, or any larger or other proportion of any other or different sort of grain, or the meal thereof, than what shall be allowed, or any mixture or thing in lieu of flour, which shall not really be the genuine flour the same shall import and ought to be, upon pain of forfeiting not exceeding five pounds, nor less than twenty shillings."

Penalty where bread shall be of a different mixture of corn than what it importeth to be of, or is allowed.

† Sect. 27. By 31. Geo. 2. c. 29. f. 24. "If any person shall make, send out, sell, or expose to or for sale, any bread deficient in weight, he shall forfeit not exceeding five shillings, nor less than one shilling, for every ounce deficient; and for every loaf found wanting less than an ounce, not exceeding two shillings and sixpence, nor less than sixpence, so as such bread which shall be complained of for wanting weight in any city, town-corporate, borough, liberty, or franchise having jurisdiction thereof, or within the bills of mortality, shall be brought before some magistrate, and weighed, within twenty-four hours after, and so as such bread which shall be so complained of as in any hundred, riding, division, liberty, rape, wapentake, or place, shall be brought before some justice of such place, and weighed, within three days after, unless such deficiency wholly arose from some accident, or was occasioned by some contrivance or confederacy."

Penalty for making bread under weight, &c.

† Sect. 28. By 31. Geo. 2. c. 29. f. 25. "Every baker shall cause to be fairly marked on every loaf of wheaten bread, be fairly marked."

"bread a large Roman W. and upon every loaf of household or brown bread a large Roman H. so as the same may, on the view thereof, be ascertained under what denomination of bread every such loaf was made (except such loaves which shall be raised by the desire of any person who shall order the same), on pain of forfeiting not exceeding twenty, nor less than five shillings."

Bakers taking a higher price or refusing to sell.

† *Sec. 29.* By 31. Geo. 2. c. 29. f. 26. "No person shall take for any bread a higher price than shall be ascertained by the court, magistrate, or justices, authorized to set the price and assize, nor refuse to sell any to any person who shall tender ready money for the same, at the price such bread, by the assize, shall be fixed at, when he shall have any such bread in his house or possession, to be sold, more than shall be requisite for the immediate necessary use of his own family or customers; and it shall be incumbent on such baker to prove the contrary, upon pain of forfeiting not exceeding forty, nor less than ten shillings."

Bread inferior to wheaten not to be higher than household.

† *Sec. 30.* By 31. Geo. 2. c. 29. f. 26. "If any person shall offer to sale any bread of an inferior quality to wheaten bread, at a higher price than household bread should be set at by the assize, he shall forfeit, by confession, or the oath of one witness, twenty shillings."

The houses, shops, &c. of bakers may be searched, and the bread weighed.

† *Sec. 31.* By 31. Geo. 2. c. 29. f. 27. and by 32. Geo. 2. c. 18. f. 2. "Any magistrate or justice, and also any peace-officer authorized by warrant of any such magistrate, in the day-time may enter into any house, shop, stall, bakehouse, warehouse, or out-house, of or belonging to any baker or seller of bread; to search for, view, weigh, and try, all or any the bread which shall be there found; and if any bread, on any such search, shall be found to be wanting either in the goodness of the stuff whereof the same shall be made, or be deficient in the due baking or working thereof, or shall be wanting in the due weight, or shall not be truly marked according to the directions of this act, or shall be of any other sort of bread than shall be allowed to be made by virtue of this act, any such magistrate or peace-officer may seize the same, and dispose thereof as he shall think fit."

Where any miller, meal-man or baker,

† *Sec. 32.* By 31. Geo. 2. c. 29. f. 28. "If information shall be given on oath to any magistrate or justice, that shall be suspected of adulterating; the magistrate, &c. upon information on oath, may enter the premises himself, and search, or may grant a search warrant to some peace-officer; and such meal and flour as shall be deemed adulterated, may be seized:

"there

“ there is cause to suspect that any miller who grinds
 “ any grain for reward, or any person who doth dress, bolt,
 “ or in any wise manufacture, any meal or flour for sale, or
 “ any maker of bread for sale, doth mix up with, or put,
 “ into, any meal or flour ground or manufactured for sale,
 “ any mixture, ingredient, or thing whatsoever, not the
 “ genuine produce of the grain such meal or flour shall im-
 “ port and ought to be, or whereby the purity of any meal
 “ or flour in the possession of any such miller, mealman, or
 “ baker, is or shall be in any wise adulterated; then such
 “ magistrate or justice, and also any peace-officer, autho-
 “ rised by warrant, in the day-time, on information, may
 “ enter into any house, mill, shop, bakehouse, stall, bolting-
 “ house, pastry, warehouse, or out-house, of or belonging
 “ to any such miller, mealman, or baker, and to search and
 “ examine; and if on any such search it shall appear that any
 “ offence hath been committed contrary to this act, then
 “ any magistrate, justice, or officer authorised as aforesaid re-
 “ spectively, may seize and take any meal or flour which
 “ shall be deemed, on any such search, to have been adul-
 “ terated, and all mixtures and ingredients which shall be
 “ found and deemed to have been used, or intended to be
 “ used, in or for any such adulteration; and such thereof
 “ as shall be seized by any peace-officer or officers authorised
 “ as aforesaid shall be carried to some magistrate or justice;
 “ and if any magistrate or justice, who shall make any sei-
 “ zure in pursuance of this act, or to whom any thing seized
 “ under the authority of this act shall be brought, shall ad-
 “ judge that any mixture or ingredients, not the genuine
 “ produce of the grain which such meal or flour so seized
 “ shall import and ought to be, shall have been put into
 “ any such meal or flour, or that the purity of any such
 “ meal or flour so seized was adulterated by any mixture or
 “ ingredient put therein; then every such magistrate or jus-
 “ tice is hereby required to dispose of the same as he shall
 “ think proper.”

† Sect. 33. By 31. Geo. 2. c. 29. s. 29. “ Every miller, And the mil-
 “ mealman, baker, or feller of bread as aforesaid, in whose ler, mealman,
 “ house, mill, shop, bakehouse, stall, bolting-house, pastry, or baker, for-
 “ warehouse, out-house, or possession, any mixture or in- feist not ex-
 “ gredient shall be found, which shall be adjudged by any ceeding ten
 “ magistrate or justice to have been lodged there *with an in-* pounds, nor
 “ tent to have adulterated the purity of meal, flour, or bread, less than forty
 “ shall, on being convicted by confession or the oath of one shillings.
 “ witness, *forfeit* not exceeding ten pounds, nor less than
 “ forty shillings; unless that such mixture or ingredients
 “ was or were not brought or lodged with any design or in-
 “ tent to have been put into any meal or flour, or to have
 “ adul-

"adulterated therewith the purity of any meal or flour, but
"that the same was in the place for some other lawful pur-
"pose."

Exception.

"And the magistrate, out of the money forfeited, may
"cause the offender's name, place of abode, and offence, to
"be published in some newspaper in or near the county,
"city, or place, where any such offence shall have been
"committed."

Obstructing
any search or
seizure.

† Sect. 34. By 31. Geo. 2. c. 29. s. 30. "If any person
"shall wilfully obstruct any search or seizure, or shall op-
"pose any such search being made, or the carrying away
"any such ingredients as aforesaid, or any bread which
"shall be seized, as not being made pursuant to this act,
"he shall forfeit not exceeding five pounds, nor less than
"twenty shillings."

No miller,
mealman, or
baker, to act as
a magistrate.

† Sect. 35. By 31. Geo. 2. c. 29. s. 31. "No miller,
"mealman, or baker, shall act as a magistrate, or justice of
"the peace, under this act, on pain of fifty pounds to any
"person who will sue for the same, by action of debt, &c.
"at Westminster, or by summary complaint before the
"court of session in Scotland."

Where the
penalty was
occasioned by
the journey-
man or ser-
vant, a recom-
pence to be
paid to the
master.

† Sect. 36. By 31. Geo. 2. c. 29. s. 32. "If any baker
"shall make complaint to any magistrate by the oath of
"one witness that any offence shall have been occasioned
"through the wilful neglect of any servant, then such ma-
"gistrate may issue his warrant for bringing such servant
"before any such magistrate, or any magistrate or justice
"of the county or place where the offender can be found,
"and examine into the complaint; and, on proof thereof
"upon oath, by an order under his hand, may adjudge
"what sum shall be paid by such servant to his master or
"mistress, by way of recompence for the money he or she
"shall have paid by reason of the wilful neglect of any such
"servant; and if any such servant shall neglect on his con-
"viction to make immediate payment, he shall be com-
"mitted to the house of correction, or some other prison
"of the county or place in which any such servant shall
"be apprehended or convicted, to be there kept to hard
"labour not exceeding one calendar month, unless pay-
"ment shall be made before the expiration of the said
"term."

Forces heard
and determin-
ed in a sum-
mary way, and

† Sect. 37. By 31. Geo. 2. c. 29. s. 33. "The mayor
"of London, or any alderman within the liberties thereof,
"offenders may be summoned.

" or

“ or any other justice, or any one of them, within their
 “ respective jurisdictions, may hear and determine, in a
 “ summary way, all offences against this act, and summon
 “ any offender; and in case the party shall not appear, or,
 “ offer some reasonable excuse for his default, then upon
 “ oath by one witness of any offence committed contrary
 “ to this act, any such magistrate shall issue his warrant for
 “ apprehending the offender; and upon the appearance, or
 “ in case he shall not appear, on notice being left at his
 “ usual place of abode, or if he cannot be apprehended,
 “ then such magistrate is authorised to proceed to make in-
 “ quiry touching the matters complained of, and to examine
 “ any witness who shall be offered on either side, on oath,
 “ as aforesaid, and shall convict or acquit the party accused;
 “ and if the penalty, on any such conviction, shall not be
 “ paid within twenty-four hours after, every such magis-
 “ trate shall thereupon issue a warrant, directed to any
 “ peace-officer within their respective jurisdictions, to make
 “ distress; and if any offender shall convey away his goods,
 “ or so much thereof that the penalty cannot be levied,
 “ then some magistrate, within whose jurisdiction the of-
 “ fender shall have removed his goods, shall back the war-
 “ rant for levying the distress; and if within five days from
 “ the distress being taken, the money forfeited shall not be
 “ paid, the goods seized shall be appraised and sold; and
 “ for want of such distress, then every such magistrate, on
 “ the application of any prosecutor, and proof made of
 “ the conviction and non-payment of the penalty and
 “ charges, by warrant under his hand and seal, shall com-
 “ mit every such offender to the common gaol or house of
 “ correction of the city or place where such offender or
 “ offenders shall be found, for one calendar month, unless
 “ payment shall be made of the said penalty, costs and
 “ charges, before the expiration of the said one calendar
 “ month.—And all such penalties and forfeitures, when re-
 “ covered, shall be paid to the informer.”

+ *Sec.* 38. But by 32. Geo. 2. c. 18. the generality of
 this application of the forfeiture to informers is restrained,
 and it is enacted, “ That the penalties not *particularly* dis-
 “ posed of by 31. Geo. 2. c. 29. where the conviction is
 “ by confession or the oath of one witness, shall be, *one*
 “ *moiety* to the informer, and the other moiety, together
 “ with all penalties incurred on the weighing, trying, or
 “ seizing of any bread by any magistrate or justice, shall be
 “ applied for the better carrying the said act into execution,
 “ as such magistrate or justice shall think fit.”

Power to sum-
mon material
evidences.

† *Sec. 39.* By 31. Geo. 2. c. 29. f. 34. "If it shall be made out by the oath of any credible person, that any one is likely to give material evidence on behalf of the prosecutor or the person accused, and will not voluntarily appear before such magistrate to be examined, every such magistrate is authorised to summons every such witness; and if any person so summoned shall neglect to appear, and no just excuse shall be offered, then (after proof by oath of such summons having been duly served) every such magistrate is authorised to issue his warrant under his hand and seal, to bring and examine upon oath every such witness: and if on his appearance he shall refuse to be examined on oath concerning the premises, without offering any just excuse, any such magistrate may, by warrant, commit any person so refusing to the public prison of the county or place in which he shall be, there to remain not exceeding fourteen, nor less than three days."

Witnesses to
be examined
on oath.

No *certiorari*,
&c.

† *Sec. 40.* By 31. Geo. 2. c. 29. f. 37. "No *certiorari*, letters of advocation, or of suspension, shall be granted to remove any conviction, or other proceedings had thereon in pursuance of this act."

Persons ag-
grieved may
appeal to the
next sessions.
Appellant is
to enter into
recognizance
to hear and
determine the
matter, and
award costs.

† *Sec. 41.* By 31. Geo. 2. c. 29. f. 38. "If any person shall think himself aggrieved, he shall have liberty to appeal to the next general or quarter sessions for the county or place, upon entering into a recognizance at the time of conviction, with two sufficient sureties, in double the sum which he shall have been adjudged to pay, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of said next general or general quarter sessions, who shall finally determine the matter of every such appeal, and award costs to be paid by either party: and if the judgment shall be affirmed, such appellant shall immediately pay down the sum he shall have been adjudged to forfeit, with such costs as the sessions shall award to the prosecutor or informer, for the expences sustained by such appeal; and in default of paying the same, any two such justices, or any one magistrate or justice of the peace, having jurisdiction in the place into which any such appellant shall escape, or where he shall reside, shall commit every such appellant to the common gaol of the county or place where he shall be apprehended, until he shall make payment; but if the appellant make good his appeal, costs shall be awarded to the appellant against such informer, and which costs may be recovered by the appellant against any such informer, in like manner as
" costs

“ costs given at any general or general quarter sessions of the peace are recoverable.”

† *Sec. 42.* By 31. Geo. 2. c. 29. f. 39. “ If any such conviction shall be made within six days before any general or general quarter sessions for the county or place where such conviction shall have been made, then the party aggrieved shall, on entering into a recognizance as before directed, appeal either to the then next or the next following sessions.” Appeal to the sessions following.

† *Sec. 43.* By 31. Geo. 2. c. 29. f. 40. “ Every action or suit brought against any magistrate or any peace-officer, for any thing done under this act, shall be commenced within six months next after the fact committed, and shall be laid in the county, city, or place, where the matter shall arise; and that the 24. Geo. 2. c. 44. so far as relates to the rendering the justices more safe in the execution of their office, shall extend to the magistrate acting under this act; and that no action or suit shall be had, nor any writ sued out, or copy of any writ be served upon, any peace-officer, until seven days after notice in writing, given to or left for him at his place of abode, by the attorney for the party intending to commence such action: which notice shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint: and any peace-officer may, at any time within seven days after any such notice, tender, or cause to be tendered, any sum of money, as amends for the injury complained of, to the party complaining, or to the attorney named in any such notice; and, if not accepted, the defendant may plead such tender in bar, together with the general issue, or any other plea, with leave of the court in which the action shall be commenced; and if, upon issue joined on such tender, the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant; and in such case, or if the plaintiff become nonsuit, discontinue, or judgment shall be given for the defendant upon demurrer, or if any action or suit shall be brought after the time limited, or shall be brought in any other place than as aforesaid, then the jury shall find for the defendant, and he shall be intitled to costs: but if the jury shall find that no such tender was made, or not sufficient, or against the defendant, they shall give the plaintiff such damages as they shall think proper; and the plaintiff shall recover costs.” Limitation of actions.
Vide the reasons for extending the protection of this statute to persons acting under the present act. 1. Burn's Justice, p. 256.
Officer may make tender of amends.

Persons may
plead the ge-
neral issue,
and obtain
treble costs.

† *Stat.* 44. By 31. Geo. 2. c. 29. s. 40. "The defend-
" ant may plead the general issue, and give this act and
" the special matter in evidence; and if a verdict shall be
" recorded for the defendant, or if the plaintiff shall be
" nonsuited, or discontinue his action after the defendant
" shall have appeared; or if judgment shall be given, upon
" a verdict or demurrer, against the plaintiff, the defendant
" shall recover treble costs."

Prosecution in
three days.

† *Stat.* 45. By 31. Geo. 2. c. 29. s. 41. "No person
" shall be convicted, for any of the beforementioned of-
" fences, unless the prosecution be commenced within three
" days next after the offence committed."

General re-
servation of
rights.

† *Stat.* 46. "This act shall not extend to prejudice any
" right or custom of the city of *London*, or the practice
" there used, or any right or custom of any lord or lords
" of any leet, to set, inquire, and punish, the breach of
" assize of bread, or the right of any clerk of the market."

Referron
of rights of
Westminster,
to set an assize
of bread with-
in the city and
liberty.

† *Stat.* 47. "Nor to prejudice the ancient right or
" custom of the dean of *Westminster*, or the high steward of
" *Westminster*, and the liberties thereof, to set, ascertain,
" and appoint the assize and weight of all sorts of bread;
" but they may respectively set, ascertain, and appoint,
" according to the meaning of this act, the assize and weight
" of all sorts of bread which shall be made, sold, or expoled
" to sale, in *Westminster*, and the liberties thereof; and
" shall and may inquire and punish the breach of every
" such assize and weight of bread, as fully and freely in all
" respects, as they or any of them have heretofore been ac-
" customed to."

Oxford and
Cambridge to
set an assize,

† *Stat.* 48. "Nor to prejudice the right of *Oxford* or
" *Cambridge*, or of their clerks of their market, to set the
" assize and weight of all sorts of bread, &c."

As to the second particular, viz. As to the making of
bread when no assize is set.

No assize and
prized bread
to be made at
the same time
in the same
place.

† *Stat.* 49. By 3. Geo. 3. c. 11. s. 1. "Although no assize
" of bread shall be set in pursuance of 31. Geo. 2. c. 29. no
" loaf called or deemed assize loaf in the tables of the assize
" and price of bread in the said act referred to, shall be
" made for sale, in any place where any loaf of the bread
" called or deemed prized loaf, in the said tables of the as-
" size and price of bread, that is to say, no assize loaves or
" the price of three-pence, and prized loaves called half-
" quartern loaves, nor assize loaves of the price of six-pence.
" and

“ and prized loaves called quartern loaves, nor affize loaves
 “ of the price of twelve-pence, and prized loaves called
 “ half-peck loaves, nor affize loaves of the price of eighteen
 “ pence, and prized loaves called peck loaves, shall, at the
 “ same time, in any place be made for sale, sold, or carried
 “ out for sale, or be offered or exposed to or for sale, or
 “ allowed to be sold, on pain of forfeiting not exceeding
 “ forty, nor less than ten shillings.”

† Sect. 50. By 3. Geo. 3. c. 11. f. 2. “ The justices at Quarter or petty session, shall
 “ any general quarter session, or at any petty session, shall
 “ appoint which of the sorts of affize or prized loaves shall
 “ be allowed to be made and sold; and also what other
 “ sorts of bread, and grain, shall be allowed to be made
 “ and sold within their respective jurisdictions, or any
 “ part thereof; and every order which shall be so made,
 “ shall be entered in a book provided for that purpose, and
 “ inspected by the makers of bread for sale, in the day-time,
 “ without fee; and after the making every such order, the
 “ justices who shall make the same shall cause a copy to be
 “ affixed up in some market or other public town within
 “ the division or place in which such order is to be ob-
 “ served; or else shall cause a copy to be inserted in some
 “ public newspaper published in the county or place, or
 “ some part thereof in which every such order is to be
 “ observed.”

petty session may appoint the sorts of affize or prized loaves, and what other bread shall be made.

A copy to be published.

† Sect. 51. By 3. Geo. 3. c. 11. f. 3. “ No justices
 “ shall allow any sorts of affize bread made of the flour or
 “ meal of wheat, other than wheaten and household bread,
 “ and loaves of white bread of the price of two-pence, or
 “ under.”

Sorts of affize bread of wheat to be allowed.

† Sect. 52. By 3. Geo. 3. c. 11. f. 4. “ Every maker
 “ of bread for sale shall observe the proportion between
 “ white and wheaten bread, and wheaten and household
 “ affize bread, as to weight, as is mentioned in the said af-
 “ fize tables; that is to say, every white loaf of the price of
 “ two-pence, or under, shall always weigh three parts in
 “ four of the weight of the wheaten loaf of the like price;
 “ and every wheaten affize loaf of bread, of whatever
 “ price the same shall be, shall always weigh three parts in
 “ four of the weight of every household affize loaf of bread
 “ of the like price; and that every household affize loaf of
 “ bread, of whatever price the same shall be, shall always
 “ weigh one third-part more than every wheaten affize loaf
 “ of the like price, on pain of forfeiting not exceeding forty
 “ shillings.”

Proportion as to weight, between the white and wheaten bread, and the wheaten and household affize bread.

The price in the peck loaf, and half-peck, and in other subdivisions, in the wheaten and in household bread.

† *Sect. 53.* By 3. Geo. 3. c. 11. f. 5. "Every peck, half-peck, quarter of a peck, and half-quarter of a peck loaf, of the meal or flour of wheat, and called wheaten bread, shall always be sold in proportion to each other respectively, as to price; and that every peck, half-peck, quarter of a peck, and half-quarter of a peck loaf made for sale, of the meal or flour of wheat, and called household bread; shall always be sold in proportion to each other, and for one fourth less in price than the loaf made for sale with the meal or flour of wheat, called wheaten bread, of the same denomination, on pain of forfeiting not exceeding forty, nor less than ten shillings."

The weight of the peck loaf, and its subdivisions, in every sort of bread; the same to be weighed before a justice, within 24 hours, and in other places within three days; unless deficiency be accounted for.

† *Sect. 54.* By 3. Geo. 3. c. 11. f. 6. "The several loaves after mentioned, shall weigh, in averdupois weight, as follows: that is to say, every peck loaf, seventeen pounds six ounces; every half-peck loaf, eight pounds eleven ounces; every quarter of a peck loaf, four pounds five ounces, and one half ounce; and every half-quarter of a peck loaf, two pounds two ounces and three quarters; on pain of forfeiting not exceeding five shillings, nor less than one shilling for every ounce wanting; and for less than one ounce, not exceeding two shillings and six-pence, nor less than six-pence; so as all such bread in any city, town-corporate, borough, liberty, or franchise, or the jurisdiction thereof, or within the weekly bills of mortality, shall be brought before some justice and weighed, within twenty-four hours after the same shall have been baked, or found in any person's custody for sale, and elsewhere, within three days, unless it shall be made out, that such deficiency wholly arose from some unavoidable accident, or was occasioned by some contrivance or confederacy."

Bread inferior to wheaten, not to be sold higher than household.

† *Sect. 55.* By 3. Geo. 3. c. 11. f. 7. "No person shall offer to sale any bread of an inferior quality to wheaten bread, at an higher price than household bread, upon pain of forfeiting not exceeding twenty shillings."

A large Roman (W) to be imprinted on all wheaten bread, and a large Roman (H) on household.

† *Sect. 56.* By 3. Geo. 3. c. 11. f. 8. "On the said wheaten or household bread shall be imprinted a large Roman (W), and on household a large Roman (H), except loaves raised by the desire of the person who shall order the same, on penalty of forfeiting not exceeding forty, nor less than ten shillings; unless it wholly arose from some unavoidable accident, or was occasioned by contrivance or confederacy."

† *Sect. 57.* By 3. Geo. 3. c. 11. f. 9. "Every loaf made of any other grain than wheat, shall be marked with some letter or letters, not more than two, as the general or quarter session, or any petty session shall direct; which order shall be entered in some book which any maker of bread may peruse without fee, and such justices shall cause a copy to be put up in some public town within the division, or shall cause a copy thereof to be inserted in some public newspaper published in the county; and if the justices shall neglect, then the maker of such bread shall, in every place where no such order shall be made, cause every loaf of such bread to be marked with any two distinct capital letters as he shall think fit (except loaves rasped by desire) on pain of forfeiting, not exceeding forty, nor less than five shillings, for every loaf of such bread which shall not be so marked as herein before is first directed."

Bread made of any other grain than wheat, to be impressed with such letters as the justices shall order. An entry to be made free for inspection. Where the justices neglect to make such order, the maker is to make every such loaf with two distinct capital letters. Penalty.

† *Sect. 58.* By 3. Geo. 3. c. 11. f. 10. "Any justice, or peace-officer by warrant of such justice, may enter any place belonging to any baker, to search, view, weigh, examine, and try, all or any bread which shall be there found; and if any bread shall, on examination thereof, by any justice, or on the oath of one witness, be found deficient in weight, or not marked, or be deficient in the due baking or working thereof, or be wanting in the goodness of the stuff, or to have been made with any mixture of meal or flour of any other grain than the same shall import to be made with, or to be made with any other proportion of grain, or to be made with any ingredient which ought not to be put therein; or to be made with any thing in lieu of flour, or that any such bread shall be made with any leaven not allowed; every justice and officer as aforesaid shall seize such bread, and dispose thereof to poor persons, unless the default wholly arose from accident, or contrivance or confederacy, upon pain of forfeiting not exceeding five pounds, nor less than twenty shillings."

Justices, or peace-officers, may enter houses, and search, &c.

Bread found defective in the weight, or not marked, &c. may be seized.

† *Sect. 59.* By 3. Geo. 3. c. 11. f. 11. "If any person shall in any wise oppose any search, view, weighing, trying, or seizing of any bread, he shall forfeit not exceeding forty, nor less than twenty shillings."

Penalty of opposing.

† *Sect. 60.* By 3. Geo. 3. c. 11. f. 12. "No miller, mealman, or baker, shall be allowed to act as a justice under this act, on pain of fifty pounds, to whoever will inform or sue for the same at *Westminster*, &c. or by way of

No miller, mealman, or baker, may act as a justice.

"of

" of summary complaint, before the court of session in
" *Scotland.*"

Default of servants. + *Sec. 61.* By 3. Geo. 3. c. 11. f. 13. " If any baker

" shall make complaint to any justice, by the oath of one
" witness, that any offence shall have been occasioned
" by default of any servant, every such justice may issue
" his warrant for bringing such servant before any such
" justice, or any justice of the county or place where
" the offender can be found, and examine into the matter ;

Satisfaction. " and on proof upon oath, is to adjudge and order what
" sum of money shall be paid to his master or mistress, for
" the money he or she shall have paid, by reason of the

Nonpayment. " default of such servant; and if such servant shall refuse
" on his conviction immediate payment, then any such
" justice may cause every such servant to be committed to

Commitment. " the house of correction, or some other prison of the
" county or place in which he shall be apprehended, to be
" kept to hard labour, not exceeding one calendar month,
" unless payment shall be made."

+ *Sec. 62.* By 3. Geo. 3. c. 11. f. 14, 15, 16. parts of
this statute, it is enacted, " That justices shall hear and
" determine the several offences; and that the penalties and
" forfeitures shall be recovered, as by the before recited
" act 31. Geo. 2. c. 29. f. 34, 35, 36. is therein di-
" rected."

+ *Sec. 63.* By 3. Geo. 3. c. 11. f. 17, 18, 19. " No cer-
" tiorari shall be granted to remove any conviction or other
" proceedings had thereupon; and the like liberty of ap-
" peal is precisely given as by 31. Geo. 2. c. 29. f. 37,
" 38, 39."

+ *Sec. 64.* By 3. Geo. 3. c. 11. f. 20, 21, 22. the same
limitation of actions; protection to justices and officers, &c,
costs, &c. is enacted in the precise words of 31. Geo. 2.
c. 29. f. 40, 41.

Limitation of prosecutions. + *Sec. 65.* By 3. Geo. 3. c. 11. f. 23. " No person shall
" be convicted under this act, unless the prosecution be
" commenced within three days; and no person con-
" victed upon this act, shall be subject or liable to be pro-
" secuted for the same offence under any other law."

+ *Sec. 66.* By 3. Geo. 3. c. 11. f. 24. the penalties and
forfeitures are to be distributed as directed by 32. Geo. 2.
c. 18. The rights of the universities are saved in the
same words as by 31. Geo. 2. c. 29. f. 44, 45.

As

As to the third particular, viz. As to the making of *standard wheaten bread*.

Sec. 67. But as by the foregoing acts of 31. Geo. 2. c. 29. and 3. Geo. 3. c. 11. two sorts of bread, made of wheat only, are allowed to be made for sale, viz. **WHEATEN** and **HOUSEHOLD**; it is enacted by 13. Geo. 3. c. 62. "That bread of the flour of wheat, which flour, without any mixture or division, shall be the whole produce of the grain, the bran or hull thereof only excepted, and which shall weigh three fourth parts of the weight of the wheat whereof it shall be made, may be at all times made and sold, and shall be called A STANDARD WHEATEN BREAD."

† *Sec. 68.* By 13. Geo. 3. c. 62. f. 2. "The bakers shall mark every loaf thereof with the capital letters S. W. and that the same may be sold, although no assize of bread be set of the weight and in the proportions following; that is to say, that every standard wheaten peck loaf shall always weigh 17lb. 6oz. avoirdupois, every half-peck loaf 8lb. 11oz. and every quartern loaf 4lb. 5oz. and one half of an ounce avoirdupois; and that every peck loaf, half-peck loaf, and quartern loaf, shall always be sold, as to price, in proportion to each other respectively; and that where wheaten and household bread, made as the law now directs, shall be sold at the same time, together with this standard wheaten bread, they be sold in respect of and in proportion to each other, as followeth: that is to say, that the same weight of wheaten bread as costs eight-pence, the same weight of this standard wheaten bread shall cost seven-pence, and the same weight of household bread shall cost six-pence, or seven standard wheaten assized loaves, shall weigh equal to eight wheaten assized loaves or to six household assized loaves of the same price, as near as may be."

Weight, price, and proportions.

† *Sec. 69.* By 13. Geo. 3. c. 62. f. 3. "The said standard wheaten bread shall not be sold as prized loaves, at one and the same time, together with assized loaves of the same standard wheaten bread."

Standard wheaten not to be sold as prized loaves at one time.

† *Sec. 70.* By 13. Geo. 3. c. 62. f. 4. "Every magistrate, or other's authorised to set the assize and fix the price of bread, are authorised to set the assize on, or fix the price of the standard wheaten bread aforesaid, according to the following Table."

Magistrates to set the assize.

The

Price of the bushel of wheat and bak- ing.			The Affize Table.											
			Small Bread.						Large Affize Bread.					
			Penny.		Two Pence.		Six Pence.		12 Pence.		18 Pence.			
s.	d.		oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	
2	9		25	4	3	2	9	9	7	11	18	15	5	28 7 0
3	0		23	3	2	14	5	8	12	0	17	6	1	26 1 1
3	3		21	6	2	10	12	8	0	5	16	0	11	24 1 0
3	6		19	14	2	7	12	7	7	3	14	14	5	22 15 8
3	9		18	9	2	5	1	6	15	4	13	14	7	20 13 11
4	0		17	6	2	2	12	6	8	4	13	0	9	19 8 13
4	3		16	6	2	0	11	6	2	2	12	4	4	18 6 7
4	6		15	7	1	14	4	5	12	11	11	9	6	17 6 1
4	9		14	10	1	13	4	5	7	13	10	15	10	16 7 7
5	0		13	14	1	11	13	5	3	7	10	6	13	15 10 4
5	3		13	4	1	10	8	4	15	7	9	14	4	14 14 5
5	6		12	10	1	9	4	4	11	13	9	7	11	14 3 8
5	9		12	1	1	8	3	4	8	9	9	1	1	13 9 10
6	0		11	9	1	7	3	4	5	8	8	11	1	13 0 9
6	3		11	2	1	6	4	4	2	12	8	5	8	12 8 3
6	6		10	11	1	5	6	4	0	3	8	0	5	12 0 8
6	9		10	5	1	4	10	3	13	13	7	11	9	11 9 6
7	0		9	15	1	3	14	3	11	9	7	7	3	11 2 12
7	3		9	9	1	3	3	3	9	8	7	3	1	10 12 9
7	6		9	4	1	2	9	3	7	10	6	15	4	10 6 13
7	9		9	0	1	1	15	3	5	13	6	11	0	10 1 7
8	0		8	11	1	1	6	3	4	2	6	8	4	9 12 7
8	3		8	7	1	0	14	3	2	9	6	5	2	9 7 11
8	6		8	3	1	0	6	3	1	1	6	2	2	9 3 3

Price of the bushel of wheat and bak- ing.		The Affize Table continued.																	
		Small Bread.						Large Affize Bread.											
		Penny.		TwoPence.		Six Pence.		12 Pence.		18 Pence.									
s.	d.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.
8	9	7	15	0	15	14	2	15	11	5	15	5	8	15	0				
9	0	7	12	0	15	7	2	14	5	5	12	11	8	11	0				
9	3	7	8	0	15	0	2	13	1	5	10	3	8	7	4				
9	6	7	5	0	14	10	2	11	14	5	7	13	8	3	11				
9	9	7	2	0	14	4	2	10	12	5	5	9	8	0	5				
10	0	6	15	0	13	14	2	9	11	5	3	7	7	13	2				
10	3	6	13	0	13	9	2	8	11	5	1	6	7	10	1				
10	6	6	10	0	13	4	2	7	12	4	15	7	7	7	3				
10	9	6	7	0	12	15	2	6	13	4	13	10	7	4	6				
11	0	6	5	0	12	10	2	5	15	4	11	13	7	1	12				
11	3	6	3	0	12	6	2	5	1	4	10	2	6	15	4				
11	6	6	1	0	12	1	2	4	4	4	8	9	6	12	13				
11	9	5	15	0	11	13	2	3	8	4	7	0	6	10	8				
12	0	5	13	0	11	9	2	2	12	4	5	8	6	8	4				
12	3	5	11	0	11	6	2	2	1	4	4	2	6	6	2				
12	6	5	9	0	11	2	2	1	6	4	2	12	6	4	2				
12	9	5	7	0	10	14	2	0	11	4	1	7	6	2	2				
13	0	5	6	0	10	11	2	0	1	4	3	0	6	0	4				
13	3	5	4	0	10	8	1	15	8	3	14	15	5	14	7				
13	6	5	2	0	10	5	1	14	14	3	13	13	5	12	11				
13	9	5	1	0	10	2	1	14	5	3	12	11	5	11	0				
14	0	4	15	0	9	15	1	13	13	3	11	9	5	9	6				
14	3	4	14	0	9	12	1	13	4	3	10	9	5	7	13				
14	6	4	13	0	9	9	1	12	12	3	9	8	5	6	5				

THE PRICE TABLE.

The Price Table.						The price of the bushel of wheat and baking.	The Price Table.						The price of the bushel of wheat and baking.
Prized Bread.							Prized Bread.						
Quar- tern Loaf.		Half Peck Loaf.		Peck Loaf.			Quar- tern Loaf.		Half Peck Loaf.		Peck Loaf.		
s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
0	2	0	5 $\frac{1}{2}$	0	11	2	9	0	8 $\frac{3}{4}$	1	5 $\frac{1}{2}$	2	11
0	3 $\frac{1}{4}$	0	6	1	0	3	0	0	9	1	6	3	0
0	3 $\frac{3}{4}$	0	6 $\frac{1}{2}$	1	1	3	3	0	9 $\frac{1}{2}$	1	6 $\frac{1}{2}$	3	1
0	3 $\frac{1}{2}$	0	7	1	2	3	6	0	9 $\frac{3}{4}$	1	7	3	2
0	3 $\frac{3}{4}$	0	7 $\frac{1}{2}$	1	3	3	9	0	9 $\frac{1}{2}$	1	7 $\frac{1}{2}$	3	3
0	4	0	8	1	4	4	0	0	10	1	8	3	4
0	4 $\frac{1}{4}$	0	8 $\frac{1}{2}$	1	5	4	3	0	10 $\frac{1}{4}$	1	8 $\frac{1}{2}$	3	5
0	4 $\frac{1}{2}$	0	9	1	6	4	6	0	10 $\frac{1}{2}$	1	9	3	6
0	4 $\frac{3}{4}$	0	9 $\frac{1}{2}$	1	7	4	9	0	10 $\frac{3}{4}$	1	9 $\frac{1}{2}$	3	7
0	5	0	10	1	8	5	0	0	11	1	10	3	8
0	5 $\frac{1}{2}$	0	10 $\frac{1}{2}$	1	9	5	3	0	11 $\frac{1}{4}$	1	10 $\frac{1}{2}$	3	9
0	5 $\frac{1}{2}$	0	11	1	10	5	6	0	11 $\frac{1}{2}$	1	11	3	10
0	5 $\frac{3}{4}$	0	11 $\frac{1}{4}$	1	11	5	9	0	11 $\frac{3}{4}$	1	11 $\frac{1}{2}$	3	11
0	6	1	0	2	0	6	0	1	0	2	0	4	0
0	6 $\frac{1}{4}$	1	0 $\frac{1}{2}$	2	1	6	3	1	0 $\frac{1}{4}$	2	0 $\frac{1}{2}$	4	1
0	6 $\frac{1}{2}$	1	1	2	2	6	6	1	0 $\frac{1}{2}$	2	1	4	2
0	6 $\frac{3}{4}$	1	1 $\frac{1}{2}$	2	3	6	9	1	0 $\frac{3}{4}$	2	1 $\frac{1}{2}$	4	3
0	7	1	2	2	4	7	0	1	1	2	2	4	4
0	7 $\frac{1}{4}$	1	2 $\frac{1}{2}$	2	5	7	3	1	1 $\frac{1}{4}$	2	2 $\frac{1}{4}$	4	5
0	7 $\frac{1}{2}$	1	3	2	6	7	6	1	1 $\frac{1}{2}$	2	3	4	6
0	7 $\frac{3}{4}$	1	3 $\frac{1}{2}$	2	7	7	9	1	1 $\frac{3}{4}$	2	3 $\frac{1}{2}$	4	7
0	8	1	4	2	8	8	0	1	2	2	4	4	8
0	8 $\frac{1}{4}$	1	4 $\frac{1}{2}$	2	9	8	3	1	2 $\frac{1}{4}$	2	4 $\frac{1}{2}$	4	9
0	8 $\frac{1}{2}$	1	5	2	10	8	6	1	2 $\frac{1}{2}$	2	5	4	10

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† *Seet.* 68. By 13. Geo. 3. c. 62. s. 5. "All persons *Penalties.*
"selling the said bread shall be liable to the penalties as they
"are liable to by the laws now in being, for any misde-
"meanor or neglect in respect to making, marking, selling,
"or exposing to or for sale, ~~wheaten~~ or household bread."

† *Seet.* 69. By 13. Geo. 3. c. 62. s. 6. "If any infor- *The miller or*
"mation shall be laid against any baker for making, mark- *mealman sell-*
"ing, baking, or exposing to or for sale, any bread, pur- *ing adulter-*
"porting to be the standard wheaten bread aforesaid, made *ated flour,*
"of flour not being the whole produce of the wheat, the *shall forfeit*
"bran or hull thereof only excepted, and weighing three *the penalties*
"fourth parts of the weight of the wheat whereof it was *directed by*
"made, and such baker shall prove that he bought the said *act 31. Geo. 2.*
"flour as and for such flour as aforesaid, of the miller or
"mealman, naming his name and place of abode, the baker
"shall stand clear and acquitted, and the miller or mealman
"shall pay the penalties of adulterating corn, meal, or flour,
"by 31. Geo. 2. c. 5, 6."

† *Seet.* 70. By 13. Geo. 3. c. 62. s. 7. "When any mag- *An affize on*
"istrate shall have set an affize on, or fixed the price of, *the price of*
"the said standard wheaten bread, they may omit the set- *standard*
"ting an affize upon, or fixing the price of, any other sort *wheaten*
"of bread." *bread fixed,*
the price of
be omitted,
any other sort may

† *Seet.* 71. By 13. Geo. 3. c. 62. s. 8. "The justices at *Quarter-ses-*
"any general or quarter sessions may prohibit for three *sions may pro-*
"months, unless they shall see cause sooner to revoke the *hibit for three*
"order for such prohibition at any adjourned quarter or *months other*
"special sessions, makers from making for sale any other sorts *than*
"of bread of a superior quality, and sold at a higher price, *standard*
"than the standard wheaten bread: provided that no such *wheaten.*
"order for such prohibition be in force until one calendar
"month after the date thereof; and every order shall be
"entered in a book, to be inspected by the makers without
"paying any fee: and after the making every such order
"the justices shall cause a copy to be affixed in some market
"or other public town within the division, or inserted in
"some public newspaper published in the county or place."

† *Seet.* 72. By 13. Geo. 3. c. 62. s. 9. "Within *London* *Company of*
"and the liberties thereof, the Company of Bakers, and in *Bakers of*
"any other place any baker, may offer all such objections *London, &c.*
"as such Company of Bakers think fit, against such prohibi- *may offer ob-*
"tion, at the time when such justices shall have under *jections.*
"consideration the ordering such prohibition as afore-
"said."

OF REGULATING THE BREAD

Wheaten loaves of the price of 1d. or 2d. may be made.

† *Stat.* 73. By 13. Geo. 3. c. 62. f. 10. "Nothing shall prevent the magistrates and others who are authorized to set an affize on bread, from allowing any white loaves or wheaten loaves of the price of one penny, or two pence, to be made and sold according to the TABLE contained in 31. Geo. 2. f. 10."

No affize on coarser bread at a lower price.

† *Stat.* 74. By 13. Geo. 3. c. 62. f. 11. it is recited, "That there may be many places where the inferior classes are used to bread made of wheat, of a coarse and cheaper sort than the standard wheaten bread;" and enacted, "That any baker may make such inferior bread, provided he sell at a price under that of the household bread, as directed by 31. Geo. 2."

Bread coarser sold at the affized household bread price, liable to penalties.

† *Stat.* 75. By 13. Geo. 3. c. 62. f. 12. "When and where any baker shall sell such inferior bread by weights and prices whereat the household bread aforesaid is at that time affized, or priced, or sold, he shall be liable to the same as bakers are now by law liable to for any of the like misdemeanors."

Powers of the magistrates.

† *Stat.* 76. By 13. Geo. 3. c. 62. f. 13. "Every magistrate shall have all powers relative to affizing, pricing, and regulating the standard wheaten bread, and punishing, as they have by any law now in being relative to any bread whatsoever."

No composition to be used.

THIRDLY, AS TO ALE AND BEER.

Stat. 77. By 1. Will. 3. sess. 1. c. 24. f. 17. "No common brewer or retailer of ale or beer shall use therein any molasses, coarse sugar, or any composition or extract thereof, on pain of forfeiting the said liquor, and also one hundred pounds, half to the king and half to the prosecutor, if sued for in six months."

Penalty.

† *Stat.* 78. By 10. & 11. Will. 3. c. 21. f. 34. "If any common brewer or retailer shall commit the said offence, or shall receive into his custody any quantity of the said materials exceeding ten pounds, he shall forfeit one hundred pounds, to be recovered and mitigated by the laws of excise; and the servant or assistant therein, twenty pounds, in like manner; and in default of payment shall be imprisoned three months."

† *Stat.* 79. By 9. Ann. c. 12. par. 24. 26. "No common brewer, innkeeper, or victualler, shall use any broom, wormwood, or other bitter ingredient (to serve instead of hops) in any beer or ale for sale (except infusing the same
"after

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"after it is brewed and tunned, to make broom or worth-wood ale or beer), on pain of twenty pounds, half to the "prosecutor, &c. to be levied by the laws of excise."

+ *Stat.* 80. By 12. Ann. stat. 1. c. 2. "No common brewer or retailer of beer or ale shall use any sugar, honey, foreign grains, *Guinea* pepper, *essentia bina*, *coccus Indicus*, or any unwholesome ingredients, in the brewing of ale or beer, or mix any of them therewith, on pain of 20*l.* to be distributed, recovered, and mitigated as afore said."

N. B. As to inhancing the price of ale, &c. vide 21. 3. Edw. 6. c. 15. and 2. Geo. 3. c. 14. before recited.

+ *Stat.* 81. By 8. Eliz. c. 9. "Magistrates, both in counties and corporations, shall fix the price of all ale and beer vessels yearly, at their Easter sessions."

+ *Stat.* 82. By 12. Car. 2. c. 24. f. 34. and 1. Will. 3. stat. 1. c. 24. f. 5. "Within the bills of mortality every barrel of beer shall contain thirty-six gallons, and every barrel of ale thirty-two gallons, and in all other places every barrel of ale or beer shall measure thirty-four gallons."

+ *Stat.* 83. By 11. & 12. Will. 3. c. 15. "All retailers of ale and beer shall retail the same by a standard measure, to be marked by a magistrate, upon penalty of any sum between ten shillings and forty shillings; and if they refuse to specify the quantities sold, they shall lose the privilege of detaining the goods of their guests in satisfaction of the reckoning."

Vide Blacker. by, 10. 1. Burn's Justice, 39.

+ *Stat.* 84. By 1. Will. & Mary, sess. 1. c. 22. "Ale, beer, cyder, and mum, may be exported upon paying the duties."

+ But by 2. Geo. 3. c. 14. which recites the above act of Will. 3. "If any merchant or master of any ship or vessel, or other person, shall cause or suffer any of the said liquors, so exported as merchandize, to be unshipped, unladen, or laid on land, or put into any other ship or vessel within Great Britain, they shall forfeit the same, and also fifty pounds for every cask of such respective liquors so unshipped, &c." (3)

(3) N. B. For the excise and other regulations respecting ale, beer, cyder, perry, mum, metheglin, meads, sweets, verjuice, and vinegar, vide 2. Burn's Justice, p. 38. to 46.

FOURTHLY, As to the article of BUTTER and CHEESE.

Stat. 85. It is recited by 13. and 14. Car. 2. c. 26. that as butter is one of the principal commodities of the product

duct of this kingdom, and is not only of universal use at home, but that great quantities are exported, it is thereupon enacted, "That every kilderkin of butter shall contain one hundred and twelve pounds, every firkin fifty-six pounds, and every pot fourteen pounds, reckoning sixteen ounces to the pound, and exclusive of the tare of the kilderkin, firkin, or pot; that new and old butter shall not be mixed; nor any whey-butter packed or mixed with butter made of cream, but that every package shall contain the same quality throughout; that no butter shall be salted with any great salt, nor more small salt mixed with it than is necessary for its preservation, on pain of forfeiting the same, and six times the value of every different pound of butter."

Noble v.

Darel,

* Term Rep.

271.

+ Sect. 86. And it hath been decided, that as the Legislature has ordained by the above statute, that every pound of butter shall contain sixteen ounces, a custom that every pound of butter sold in a particular market-town shall weigh eighteen ounces, is bad.

+ Sect. 87. By 13. & 14. Car. 2. c. 20. s. 3. "No persons whatsoever shall repack for sale any butter, upon pain of double the value. And whoever shall pack butter, shall pack his butter into good and sufficient casks, &c. and shall set upon every firkin and cask, when the same is thoroughly seasoned in water, a continuing visible mark of the just weight of the empty cask, and, when filled with butter, the first letter of his christian and surname at length, with an iron brand, on pain of ten shillings for every hundred weight of butter, and so in proportion for a greater or less quantity. And every potter shall set upon every pot which he shall make for the packing of butter the just weight of such pot when burnt, and his christian and surname as aforesaid, on pain of one shilling for every pot he shall omit so to mark; and every farmer or packer of butter, two shillings for every pot he uses so omitted to be marked, one half to the poor, the other to the prosecutor, to be recovered by action of debt, indictment, information, or presentment (if commenced within four months after the sale), either in the sessions of the peace, or in the court of record of the place where the offence is committed."

+ Sect. 88. By 4. Will. & Mary, c. 7. "After the factor or buyer hath bought and contracted for the said commodity, and approved by searching and weighing the same if he think fit, the seller shall not be liable to any of the penalties above specified; but the said factor or buyer shall mark the said butter, or the cask wherein

"it

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“ it is, and in case the same shall be afterwards exchanged
 “ or opened, the cask changed, or any bad butter mixed
 “ with good butter, or any other fraud be committed by
 “ the seller, the offender, on conviction by one witness be-
 “ fore one justice, shall forfeit twenty shillings for every
 “ such firkin and offence.”

† *Stat.* 89. And by 4. Will. & Mary, c. 7. to the end
 the trade for butter and cheese may not be engrossed by par-
 ticular persons, it is enacted, “ That every warehouse-
 “ keeper, weigher, searcher, or shipper of butter and cheese,
 “ at any port or place in this kingdom, shall receive all
 “ butter and cheese brought to them for any of the cheese-
 “ mongers free of the city of *London*, or other person
 “ making the said commodities, and shall take care and ship
 “ the same, without preference, on the next vessel for *London*,
 “ unless the owners order the contrary, at the rate of two
 “ shillings and six-pence a-load, and no more, on pain of
 “ ten shillings for every firkin of butter, and five shillings
 “ for every wey of cheese. And the said weigher shall keep
 “ a book of receiving and shipping the same, &c.” (4)

(4) By 3. Hen. 6. c. 4. 18. Hen. 6. c. 3. butter and cheese may be exported to
 any place.—By 9. Hen. 6. c. 8. the wey of cheese shall be of a certain weight.—By
 2. Ph. & Mary, c. 5. 13. Eliz. c. 25. f. 20. a licence is to be granted on the exporta-
 tion.—By 21. Jac. 1. c. 22. justices may restrain the purchasing of them.—By 32. Car. 1.
 c. 2. f. 9. the importation of foreign butter and cheese is restrained.—By 8. Geo. 2.
 c. 27. the packing of butter in the city of *York* is regulated.—By 17. Geo. 2. c. 8.
 the same at *New Malton*.—By 13. Geo. 3. c. 5. f. 2. cheese may be imported for a
 limited time, duty free.

FIFTHLY, AS TO CATTLE, &c.

† *Stat.* 90. It is enacted by 31. Geo. 2. c. 40. f. 11.
 “ That no salesman or other broker or factor, who shall be
 “ employed to buy or sell any sort of cattle for others by
 “ commission, or for reward to be paid or taken by himself
 “ or any servant or agent, shall, directly or indirectly, for
 “ his own account, buy any live ox, bull, cow, steer, bul-
 “ lock, heifer, calf, sheep, lamb, or swine, in *London*, or
 “ within the bills of mortality, or at any place while any
 “ such cattle shall be on the road, or be driving, bringing,
 “ or coming up, or offered to or for sale in *London*, or
 “ within the bills of mortality (other than such cattle which
 “ any such salesman, broker, or factor, shall actually pur-
 “ chase for the necessary use or provision of his family, and
 “ shall actually use accordingly); and that no such sales-
 “ man, broker, or factor, shall sell or expose, or offer to or
 “ for sale, on his own account, in *London*, or within the
 “ bills of mortality, either by himself, or his servant or
 “ agent,

"agent, any live ox, bull, cow, steer, bullock, heifer, calf, sheep, lamb or swine, upon pain, on every conviction, of forfeiting double the value of any live cattle which he shall so buy or sell on his own account; provided the prosecution be commenced within three days after the offence committed."

† *Seft.* 91. "On complaint made on oath, the justice of the district is to summon, &c. the offender and the witnesses, and, on the parties appearing or not appearing, thereupon is to proceed to hear the complaint in a summary way, and on such payment of the forfeiture on conviction is to issue his warrant for the levying thereof by distress and sale, and for want of distress to commit the offender for any time not exceeding one month, nor less than ten days, unless payment be sooner made. And a witness refusing to be examined, may be committed not exceeding ten days. Appeal may be made by the seller, if aggrieved, to the quarter-sessions, on giving security and notice, and the determination of the sessions to be final."

SIXTHLY, As to FISH, I shall examine,

1. The size and preservation of them.
2. The rules for fishing in and near the sea.
3. Their importation.

Vide 2. Inst.
200.

† *Seft.* 92. It is said, that fishponds, or waters wherein fish are kept and nourished, being a matter of profit, and tending to the increase of victuals, any man may of common right erect them; and it is therefore provided by 3. Edw. 1. c. 20. "That if any be attainted at the suit of the party of trespassing in parks or ponds, great and large amends shall be awarded, the offender suffer three months imprisonment, make fine at the discretion of the Court, and find surety not to offend again, &c."

As to the FIRST PARTICULAR, *viz.* Of the size and preservation of fish.

† *Seft.* 93. It is enacted by 1. Geo. 1. stat. 2. c. 18. s. 14. "That no person shall cause any thing to be done in the Severn, Dee, Wye, Teame, Tees, Ribble, Mersey, Dun, Ayr, Ouse, Swale, Calder, Wharf, Ewre, Darwent, or Trent, whereby the spawn of any salmon, or any salmon not eighteen inches from the eye to the extent of the middle of the tail, shall be taken or killed: or shall set any thing
"across

“across the said rivers whereby the salmon may be hindered
 “from passing up to spawn: or shall, from 31 July to
 “12 November (except in the Ribble, where they may be
 “taken between the 1 January and 15 September), take
 “any salmon of any kind; or shall after every 12th No-
 “vember fish there for salmon with any net less than two
 “inches and a half in the mesh, on pain of forfeiting the
 “fish (a), nets, and five pounds, on conviction within one (a) As it is
 “month, on view, confession, or one witness, by distress; not said who
 “and to be distributed half to the informer and half to the shall have the
 “poor: on default, hard labour for any term between one fish, they are
 “and three months, and such other corporal punishment forfeited to
 “as the justice shall think fit.” the king.
 2. Burn, 321.

† Sect. 94. By 1. Geo. 1. c. 18. s. 15. “No salmon out
 “of the said rivers shall be sent to London under six pounds
 “weight, on pain that the sender, buyer, and seller, shall
 “forfeit five pounds and the fish, to be levied and distri-
 “buted on conviction as aforesaid, or to suffer imprison-
 “ment as aforesaid for three months, unless sooner paid,
 “But by s. 17. an appeal may be to the next sessions.”

† Sect. 95. By 13. Edw. 1. stat. 1. c. 47. “No salmon
 “shall be taken in any water where salmon are taken be-
 “tween 8th September and the 11th of November; nor
 “shall any young salmon be taken at mill-pools (by
 “13. Rich. 2. s. 1. c. 19.), in any other places from Mid-
 “April to Midsummer, on pain of having the nets and en-
 “gines burnt, for the first offence; for the second, impri-
 “sonment for a quarter of a year; for the third, a whole
 “year; and so on, as the trespass shall increase; and over-
 “seers shall be assigned (b) to inquire of the same.” (b) 2. Inst.
 477.

† Sect. 96. By 13. Rich. 2. stat. 1. c. 19. “No persons
 “shall put into any waters at any time of the year any
 “nets called *stalkers*, nor any other engines whatever by
 “which the fry or brood of salmon, lampreys, or any other
 “fish, may be destroyed, on pain as aforesaid. And all wa-
 “ters in Lancashire shall be put into defence as to taking of
 “salmon from Michaelmas to Candlemas, and in no other
 “time of the year.”

† Sect. 97. By 17. Rich. 2. c. 19. “The justices of peace
 “and the lord-mayor of London, on the Thames and Med-
 “way, shall survey the offences in both the acts last above
 “mentioned, and shall survey and search all the weirs in
 “such rivers, that they shall not be very straight for the
 “destruction of such fry and brood, but a reasonable wide-
 “ness after the old assize used and accustomed: and they
 “shall

"shall appoint under-conservators, who shall be sworn to make like survey, search, and punishment; and they shall inquire in sessions, as well by their office as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted to come before them, and if they be thereof convicted, they shall have imprisonment and fine at the discretion of the justices; and if the same be at the information of an under-conservator, he shall have half the fine."

Whether the penalty is 20l. or 20s. for this offence, vide 2. Burn's Justice, 323.

† *Stat.* 98. By 1. Eliz. c. 17. made perpetual by 3. Car. 1. c. 4. "No person, of whatever state, degree, or condition, by any ways or means whatsoever, shall take and kill any young brood, spawn, or fry, of eels, salmon, pike, or of any other fish; nor shall take or kill any salmon or trout not being in season, nor any pike or pikerel not being in length ten inches or more, nor any salmon not being in length sixteen inches or more, nor any trout not being in length eight inches or more, nor any barbel not being in length twelve inches or more; nor shall any fish be taken with any manner of net, or by any other engine or device whatsoever, but only with a net or trammel whereof every mesh or mark shall be two inches and a half broad, angling excepted."

† *Stat.* 99. "But it is provided, that such nets and other engines as have been used for the taking of smelts, loches, minnows, bullheads, gudgeons, or eels, may still be in all such places where such fish have been used to be taken and killed, so that such persons do not take, kill, or destroy with such nets any other fish, contrary to the meaning of this act."

† *Stat.* 100. "The lord admiral of *England*, the mayor of *London*, the lord of every port in *England* or *Wales*, or, in default of being presented to the port, the justices of assize, &c. and all persons lawfully intitled to have any conservation of rivers, streams, or waters, are empowered to inquire into offences against this act by the oaths of twelve men or more, and to hear and determine the same within their respective jurisdictions; and all fines, &c. resulting from the several convictions, shall be to the use of such persons as heretofore lawfully had or were intitled to the same."

† *Stat.* 101. By 33. Geo. 2. c. 27. "No person shall take, or knowingly have in his possession either in the water or on shore, or sell, or expose to sale, any spawn, fry, or brood of fish, or any unfizeable fish, or fish out of season,

“son, or any smelt not five inches long: and any person
 “may seize the same, together with the baskets and package,
 “and charge a constable or other peace-officer with the of-
 “fender and with the goods, and shall carry them before a
 “justice, and on conviction before such justice, the same
 “shall be forfeited and delivered to such prosecutor, and
 “the offender shall besides forfeit twenty shillings, half to
 “the prosecutor and half to the poor where the offence is
 “committed, on default, by distress, to be committed to
 “hard labour not exceeding three months, unless sooner
 “paid. But the justice may remit any portion equal to or
 “within one half of the said penalty.”

† *Sect. 102.* By 2. Hen. 6. c. 15. “If any person shall
 “fasten any nets over rivers, to stand continually day and
 “night, he shall forfeit five pounds.”

As to the SECOND PARTICULAR, *viz.* The rules for fish-
 ing in and near the sea.

† *Sect. 103.* By 3. Jac. 1. c. 12. “Any person who shall
 “erect any new weir along the sea-shore, or in any haven,
 “harbour, or creek, or within five miles of the mouth
 “thereof, or shall take spoil or destroy any spawn, fry, or
 “brood, of any sea-fish, in any device whatsoever, shall for-
 “feit ten pounds for every offence, half to the king, half
 “to the informer; and if any person shall, within the dis-
 “tance of the places aforesaid, fish with any draw-net or
 “drag-net under three inches mesh, *viz.* one inch and a
 “half from knot to knot, except for the taking of smoulds
 “in *Norfolk* only, or with any net with canvass or other
 “engine or device, whereby the spawn, fry, or brood of sea-
 “fish may be destroyed, shall forfeit the net and ten shil-
 “lings, to be levied by distress. But it is provided, that
 “nothing in this act shall restrain the taking of herrings,
 “pilchards, sprats, or lavidarian, with nets of a lesser mesh;
 “and further that it shall not extend to *Anglesea* (5).”

(5) For the preservation of fish in the Severn, see 30. Car. 2. stat. 1. c. 9. a private act.

† *Sect. 104.* By 1. Geo. 1. ft. 2. c. 18. “Whoever shall
 “use at sea upon the English coast any haul-net, drag-net,
 “or set-net for catching any fish, except herrings, pilchards,
 “sprats, or lavidarian, of less than three inches and a half
 “mesh, from knot to knot; or which hath a false or
 “double bottom; or shall put one net behind another; he
 “shall, on conviction before one justice, on the oath of
 “two witnesses, in one month after the offence, forfeit the
 “same

“ same and twenty pounds, half to the informer and half
 “ to the poor, by distress, and for want of sufficiency to be
 “ committed for twelve months, and the nets to be burnt.
 “ But an appeal may be made to the next session.”

+ *Sect.* 105. By 1. Geo. 1. st. 2. c. 18. “ If any person
 “ shall bring to shore or expose to sale any fish less than the
 “ following sizes from the eyes to the extent of the tail,
 “ viz. brett or turbot sixteen inches, brill or pearl fourteen;
 “ codlin twelve; whiting six; bass and mullet twelve;
 “ sole, plaice, and dab, eight; flounder seven; he shall
 “ forfeit the fish to the poor, and twenty shillings, half to
 “ the informer, and half to the poor, to be levied as afore-
 “ said, and for default or insufficiency to be severely
 “ whipped, and kept to hard labour from six to fourteen
 “ days. Appeal to next sessions.”

+ *Sect.* 106. By 33. Geo. 2. c. 2. “ Brett, turbot, brill,
 “ or pearl, although under the same dimensions, may be
 “ exposed to sale so as the same be not sold by retail for
 “ above six-pence per pound; and if any greater price shall
 “ be demanded or taken, or such fish shall not be weighed
 “ or measured if required, the same shall be forfeited, and
 “ the offender shall pay twenty shillings, to be recovered,
 “ &c. as before directed; and the money paid for the
 “ purchase of such fish shall be returned to the party.”

+ *Sect.* 107. By 9 Geo. 2. c. 33. s. 4. “ No person
 “ shall take, kill, or destroy, any lobsters on the coast of
 “ Scotland, from the first of *June* to the first of *September*,
 “ on pain of five pounds, on conviction before two jus-
 “ tices of the shire on the coast where the offence shall be
 “ committed.” (6)

(5) For further particulars relating to the price of fish within the bills of mortality,
 vide 10. and 11. Will. 3. c. 24. s. 11. 9. Ann. c. 26. 22. Geo. 2. c. 49. 29. Geo. 2.
 c. 39. 30. Geo. 2. c. 21.

* As to THE THIRD PARTICULAR, viz. Respecting the
 importation of fish.

+ *Sect.* 108. By 18. Car. 2. c. 2. “ If any ling, herring,
 “ cod, or pilchard, salmon, eels, or congers, taken by
 “ foreigners, shall be imported or exposed to sale, any
 “ person may seize the same, to be divided equally between
 “ the informer and the poor.”

+ *Sect.* 109. By 1. Geo. 1. c. 18. and 9. Geo. 2. c. 33.
 “ No fish taken by or received of any foreigner, except
 “ protestants inhabiting in *England*, shall be imported
 “ (except

“(except eels, stockfish, anchovies, sturgeon, botargo, or caveao, lobster, and turbot), on pain of one hundred pounds, and the master of the vessel fifty pounds, half to the poor, and half to the informer, who shall sue in twelve months in any of the courts at *Westminster*.” (7)

(7) For the law respecting the salting of fish, vide 2. Burn's Justice 112 to 128; and for the British herring fishery, vide 28. Geo. 2. c. 14.

SEVENTHLY, AS TO BACON AND PORK.

† *Stat.* 110. By 18. Car. 2. c. 2. “If any beef, pork, or bacon, for sale, shall be imported, they may be seized, and shall be forfeited, one half to the poor, and the other to the person who shall seize the same: and by the 20. Car. 2. c. 7. those who shall seize the same are indemnified.”

† *Stat.* 111. By 12. Car. 2. c. 4. f. 11. “When beef, pork, and bacon, do not exceed, viz. beef five pounds the barrel, pork six pounds ten shillings the barrel, and bacon sixpence a pound in price, at the ports from whence they are laden, and at the time of their lading, the same may be shipped, carried out, and exported.”

† *Stat.* 112. By 22. Car. 2. c. 13. f. 4. “Beef, pork, and bacon, may be exported by native or foreigner, although the same do exceed the prices above-mentioned at the ports, &c. at the time of their lading.”

† *Stat.* 113. By 3. Will. and Mary, c. 8. “All sorts of beef, pork, or hogs-flesh, may be exported into any part of the world in amity with the crown, free from any custom or imposition whatsoever.”

† *Stat.* 114. By 4. Will. and Mary, c. 5. f. 2. “Fourpence shall be paid for every pound of bacon imported.” Vide 3. and 4. Will. and Mary, c. 8.

† *Sect.* 115. By 5. Will. and Mary, c. 2. f. 4. “The said sum shall be paid from the first day of the session.”

† *Sect.* 116. And by 3. Geo. 2. c. 20. f. 16. “Beef and pork salted with foreign salt shall receive on exportation one shilling and sixpence *per* barrel.”

EIGHTHLY,

LIGHTLY, AS TO HAY AND STRAW.

For the regulation of the haymarket at Westminster, vide 8. and 9. Will. 3. c. 17.

† *Sect. 117.* It is enacted by 2. Will. and Mary. f. 2. c. 8. f. 16. "That every truss of old hay brought or offered to be sold within the bills of mortality, between first *August* and first *June*, shall contain and be the full weight of fifty six pounds at least; and that every truss of hay brought or offered to be sold, as aforesaid, between first *June* and first *August*, being new hay of that summer's growth, shall be and contain the full weight of sixty pounds, and old hay of any former year's growth, the weight of fifty-six pounds as aforesaid; and if any hay shall be brought, or offered to be sold, as aforesaid, whereof any truss shall be of less weight than aforesaid, the person so bringing or offering such hay to be sold, shall forfeit for every truss, not being the full weight, eighteen pence."

† *Sect. 118.* By 31. Geo. 2. c. 40. "All straw which shall be sold or delivered in, or brought to, or exposed to sale in *London*, or within the bills of mortality, shall be sold and delivered in bundles or trusses, firmly bound up, and of the full weight of thirty-six pounds of good and sound straw, exclusive of any other thing which shall be put therein; and whoever shall bring into, or expose to sale, in *London*, or within the bills of mortality, or in any place within the distance of thirty miles from the extent of any part of the limits of the said bills of mortality, when straw shall be sold in bundles or trusses, any bundle or truss of straw which shall be of less weight than thirty-six pounds of good and sound straw, or which shall be in the inside of a different quality or goodness from which on the outside it shall appear to be, shall forfeit twenty-pence for every offence, and the sum of one shilling for every bundle or truss of straw."

† *Sect. 119.* By 31. Geo. 2. c. 40. f. 2. and 3. "Every truss of hay shall be made up in like manner as the straw aforesaid, and such hay only as shall be good shall be deemed and taken to be the hay which is to make up the weight every truss of hay by law ought to be; and also the pair of bands with which any truss of hay shall be bound, shall not exceed the weight of five pounds, upon pain of forfeiting for every offence one shilling."

† *Sect. 120.* By 31. Geo. 2. c. 40. f. 4. "Whoever shall bind hay contrary to the directions of this act, shall forfeit three-pence for every bundle or truss of hay or straw, " if

" if objected to within twenty-four hours by the proprietor."

† *Secl.* 121. By 31. Geo. 2. c. 40. f. 5. " No person who shall act as a common saleman in selling hay or straw for any other person for gain or reward, or by commission in *London*, or within the bills of mortality, shall directly or indirectly buy any hay or straw on his own account, other than what he shall purchase to spend for his own use; and if any such person shall buy any hay or straw on his own account to sell again, or shall sell in *London*, or within the bills of mortality, any hay or straw which shall have been brought by him on his account, shall forfeit one shilling for every truss."

N.B. For the regulation of the markets with respect to the sale of these articles, vide the 6, 7, 8, 9, and 10 sections of the act.

NINTHLY, AS TO FRUIT.

† *Secl.* 122. By 1. Ann. stat. 1. c. 15. f. 1. " The measure commonly called *water* measure shall be round, and in diameter eighteen and a half inches within the hoop, and eight inches deep, and no more, and so in proportion for any greater or lesser measure; and every such measure by which apples and pears are sold, shall be heaped as usually; and whoever shall buy or sell apples or pears by or with any other measure, shall forfeit ten shillings for every offence, half to the informer, and half to the poor, on conviction by one witness, before one magistrate, to be levied by warrant of distress. But this act shall not extend to measures sealed and allowed by the Company of Fruiterers of *London*, which are used in the said city, or within three miles thereof."

† *Secl.* 123. By 10. Geo. 2. c. 27. " Upon all apples imported into *Great Britain* shall be paid, over and above the duties already imposed, an additional duty of two shillings a bushel, and so for any greater or less quantity, to be paid down in ready money by the importers at the time of landing the same, which duty shall be applied in the like manner as other duties upon the same article."

N.B. By 3. Geo. 1. c. 20. there was an additional duty of two shillings a bushel, continued for seven years by 11. Geo. 1. c. 1.

TENTHLY, AS TO HONEY AND WAX.

† *Secl.* 124. It is enacted, by 23. Eliz. c. 8. " That whoever, in the making and melting of wax, shall mix or mingle the same with rosin, tallow, turpentine, or any other deceitful thing, to the intent to sell the same, or to offer the same to be sold or uttered for wax, shall forfeit the same; and if the same shall happen to be sold before the corruption is discovered, the master, mingler, or

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“ corrupter, or the causer or procurer thereof, shall forfeit
 “ for every pound two shillings, half to the queen, half to
 “ the party decerned, if he will sue for it, or any other
 “ person that will sue for the same in any of the queen’s
 “ courts of record.”

† *Sec. 125.* By 23. Eliz. c. 8. f. 2. “ Every melter and
 “ maker-up of unwrought wax shall have a stamp of the
 “ breadth of sixpence, wherein two letters shall be plainly
 “ graven, signifying his name and surname, with which
 “ every piece of wax shall be printed or stamped triangle
 “ in three places, upon the outside of the upper part of
 “ every piece so melted and cast, on pain to forfeit the
 “ value of every piece of cake sold, or offered to be sold,
 “ and not so stamped or marked.”

† *Sec. 126.* By 23. Eliz. c. 8. f. 3. “ Whoever shall
 “ melt, mix, work, or sell any wrought wax, or any stuff
 “ or wares wrought with wax, shall have a stamp or seal
 “ set to his work, that it may be known who were the
 “ workers thereof, on pain of forfeiting the same, half to
 “ the queen or party deceived, &c. as before-mentioned.”

† *Sec. 127.* By 23. Eliz. c. 8. f. 3. “ All barrels, kil-
 “ derkins, and firkins, filled with honey by the maker and
 “ filler, shall be marked with two letters standing for his
 “ name and surname, each letter of an inch and a half in
 “ length at least, burnt upon the head of the cask with a
 “ hot iron, upon pain of six shillings and eight-pence for
 “ every package sold, or offered to be sold, and not so
 “ marked.”

† *Sect. 128.* By 23. Eliz. c. 8. f. 4. “ Whoever shall fill
 “ and sell, or cause to be filled and sold, or offered to be
 “ sold, any barrel, kilderkin, or firkin, with honey, for
 “ or in the name of a barrel, kilderkin, or firkin, containing
 “ less than thirty-two wine gallons the barrel, sixteen wine
 “ gallons the kilderkin, and eight wine gallons the firkin,
 “ shall forfeit for every half gallon so lacking, five shillings.
 “ And whoever shall corrupt the honey so sold with any
 “ deceitful mixture, shall forfeit the barrel or vessel, and the
 “ honey therein, to be divided between the queen and the
 “ prosecutor.”

† *Sect. 129.* By 23. Eliz. c. 8. f. 5. “ This act shall not
 “ extend to persons selling the wax of their own bees, in
 “ small pieces in open market, nor to servants employed by
 “ their masters in mingling, &c. so as they will confess the
 “ same.”

† *Sec.*

† *Sect. 130.* And by 23. Eliz. c. 8. §. 5. "Whoever shall counterfeit any of the stamps or marks above-mentioned, or shall use the marks of another, shall forfeit five pounds, to be recovered and divided as aforesaid, and for non-sufficiency of payment to be set on the pillory in the next market town, and suffer three months imprisonment."

ELEVENTHLY, As to COALS.

† *Sect. 131.* By 12. Ann. stat. 2. c. 17. "The coal-bushel shall be made round with a plain and even bottom, nineteen and one half inches in diameter, and to contain one *Winchester* bushel, and one quart of water; a brass standard of which bushel shall be kept in the exchequer."

† *Sect. 132.* By 16. and 17. Car. 2. c. 2. "All sea-coal brought into the *Thames* shall be sold by the chaldron, containing thirty-six bushels heaped up, and according to the bushel sealed for that purpose at *Guildhall*, and so for a greater and lesser quantity; and all other sorts of coals, sold by weight and not by measure, shall be sold after the proportion of an hundred and twelve pounds *avordupois* to the hundred weight, upon pain of forfeiture, and of double the value, on conviction by one justice where the offence shall be committed, half to the prosecutor, and half to the poor, or to the surveyor of the highways, as the magistrate shall direct."

† *Sect. 133.* By 17. Geo. 2. c. 35. "Any three justices shall be empowered to set the prices of sea-coals, as they, from time to time, shall judge reasonable, allowing a competent profit to the retailer, beyond the price paid by him to the importer, &c., and if any engrosser or retailer of such coals shall refuse to sell as aforesaid, the justices taking a constable may enter the wharf, &c. and sell the same, returning the produce to such engrosser or retailer, deducting the charges: but no interested person shall be engaged in setting such price as aforesaid." (8)

(8) For the regulation respecting coals within the bills of mortality, vide 3. Geo. 2. c. 26. 17. Geo. 2. c. 15. 19. Geo. 2. c. 35. 20. Geo. 2. c. 49. 23. Geo. 2. c. 26. 32. Geo. 2. c. 27. 7. Geo. 3. c. 23. 21. Geo. 3. c. 24.

CHAPTER THE EIGHTY-FIRST.

OF BARRATRY.

IN treating of barratry, I shall consider,

Matthew.
Dufresne.
Spelman.

1. Who shall be said to be a barrator.
2. In what manner such an offender is to be proceeded against.
3. To what punishment he is liable.

As to THE FIRST POINT, *viz.* Who shall be said to be a barrator.

Sec. 1. It seems, that a barrator is a common mover, Dalt. p. 38.
exciter, or maintainer of suits or quarrels, either in courts, Co. Lit. 368.
or in the country. 8. Coke 36.
Cro. Jac. 527.

Sec. 2. And it is said not to be material, whether the Co. Lit. 368.
courts wherein such suits are commenced be of record or 8. Coke 36.
not, or whether such quarrels in the country relate to a disputed title of possessions or not; but that all kinds of disturbances of the peace, and the spreading of false rumours and calumnies, whereby discord and disquiet may grow among neighbours, are as proper instances of barratry, as the taking or keeping the possession of lands in controversy.

Sec. 3. But it hath been holden, that a man shall not 1. R. Abr. 355.
be adjudged a barrator in respect of any number of false 3. Modern 98.
actions brought by him in his own right. However, if 8. Coke 36.
such actions be merely groundless and vexatious, without any manner of colour, and brought only with a design to oppress the defendants, I do not see why a man may not as properly be called a barrator for bringing such actions himself, as for stirring up others to bring them.

Sec. 4. But it seems, that an attorney is in no danger 3. Mod. 97, 98.
of being judged guilty of an act of barratry, in respect of
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his maintaining another in a groundless action, to the commencing whereof he was no way privy.

8. Coke 36.

Sect. 5. Also it seems clear, that no one can be a barrator in respect of one act only; for every indictment for such crime must charge the defendant with being *communis barrator*.

2. Rolle 39.
See chap. 1.
sect.

Sect. 6. It seems to have been holden, that a *feme covert* cannot be indicted as a common barrator; but this opinion seems justly questionable; for since a *feme covert* is as capable of exciting quarrels, in the frequent repetition whereof the notion of barratry seems to consist, as if she were sole, why should she not as properly be indictable for it?

As to THE SECOND POINT, *viz.* In what manner offenders of this kind are to be proceeded against.

Sect. 7. It is enacted by 34. Edw. 3. c. 1. "That in every county shall be assigned for the keeping of the peace one lord, and with him three or four of the most worthy of the county, &c. and that they shall have power to restrain offenders, rioters, and all other barrators, and to pursue, arrest, take, and chastise them, according to their trespass or offence; and so cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement, &c."

Con. B. 2. c. 3.
f. 38, 39.
Yelverton 46.
2. Rolle 151.

Sect. 8. It seemeth from these words, that justices of peace, as such, have cognizance of barratry without any other commission; *sed quære*, for the contrary opinion seems to have been holden in *Rolle's Reports*.

1. Modern
252.
1. Sid. 282.
C. Jac. 526.

Sect. 9. However, it seems clear, that no general indictment of this kind, charging the defendant with being a common oppressor, and disturber of the peace, and stirrer-up of strife among neighbours, is good, without adding the words *communis barrator*, which is a term of art appropriated by the law to this purpose.

(a) 2. R. Ab.
79. 82.
C. Jac. 527.
C. Car. 340.
3. Keb. 409,
410.
C. Ellis. 142.

Sect. 10. (a) Also it seemeth to be certain, that an indictment of barratry concluding *contra formam statuti* is good, though no statute be made directly against it, but only for the punishment of it, supposing it an offence at common law.

Sect. 11. (a) Also it hath been holden, that an indictment of this kind may be good, without alledging the offence at any certain place, because from the nature of the thing, consisting in the repetition of several acts, it must be intended to have happened in several places; for which cause it is said, that a trial ought to be by a jury from the body of the county. (a) 2. Keb. 410. C. Eliz. 195. Con. Lat. 194. 2. Hale 180. Palmer 450. 1. Rolle 295.

Sect. 12. (b) But it hath been resolved, that such an indictment is not good, without concluding *contra pacem*, &c.; for this is an essential part of it. (b) C. Jac. 527.

Sect. 13. (c) Also it seemeth to be a settled practice not to suffer the prosecutor to go on in the trial of an indictment of this kind, without giving the defendant a note of the particular matters which he intends to prove against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances. (c) 5. Mod. 18. 1. Ld. Ray. 490. 12. Mod. 516. 2. Atk. 340.

AS TO THE THIRD POINT, *viz.* In what manner offenders of this kind are to be punished.

Sect. 14. It is said, that if they be common persons, they are to be fined and imprisoned, and bound to their good behaviour; and if they be of any profession relating to the law, that they ought also to be farther punished by being disabled to practise for the future. Hutton 104. Vide 1. Dan. Ab. 111. 113.

CHAPTER THE EIGHTY-SECOND.

OF USURY.

OFFENCES under the degree of capital, more immediately against the subject, not amounting to an actual disturbance of the peace, which may be committed by private persons without any relation to an office, and which are neither infamous nor grossly scandalous, and more immediately affect the interests of particular persons, seem to be reducible to the following heads.

1. Usury.
2. Maintenance.
3. The offence of buying or selling pretended titles.

In treating of USURY, I shall consider,

1. What shall be deemed usury.
2. How it is restrained by common law.
3. How by statute.

As to THE FIRST GENERAL POINT, *viz.* What shall be deemed usury.

SECT. 1. It seems that usury, in a strict sense, is a contract upon the loan of money to give the lender a certain profit for the use of it, upon all events, whether the borrower make any advantage of it, or the lender suffer any prejudice for the want of it, or whether it be repaid on the day appointed, or not.

Wood's Inst. b. 3. p. 425.
3. Inst. 151.
B. Usury, 12.
2. Strange 816. 1243.
4. Com. 156.
2. Com. 455.

SECT. 2. And in a larger sense it seemeth, that all undue advantages taken by a lender against a borrower come under the notion of USURY, whether there were any contract in relation thereto, or not; as where one in possession of land, made over to him for the security of a certain debt, retains his possession after he hath received all that is due from the profits of the land.

Gibb. 1070.
Cowper 797.

2. R. Abr. 801. *Sect. 3.* But it hath been resolved, that an agreement to
 26. Edw. 3. 71. pay double the sum borrowed, or other penalty on the non-
 2. Inst. 89. payment of the principal debt at a certain day, is not usurious,
 5. Rep 69. because it is in the power of the borrower wholly to dis-
 Cowper 113. charge himself, by repaying the principal according to the
 bargain.

AS TO THE SECOND GENERAL POINT, *viz.* How usury
 is restrained by the common law.

3. Inst. 151. *Sect. 4.* It is said, that anciently it was holden to be
 2. R. Abr. 800. absolutely unlawful for a christian to take any kind of usury,
 2. Inst. 506. and that whosoever was guilty of it, was liable to be punished
 Palm. 293. by the censures of the Church in his life-time; and that if
 Temp. after death any one was found to have been an usurer while
 Hardwicke living, all his chattels were forfeited to the king, and his
 420. lands escheated to the lord of the fee.

2. Ventris 42. *Sect. 5.* Also it seemeth to have been the opinion of the
 2. Vern. 145. makers of some late acts of parliament, as 5. Edw. 6. c. 20.
 Eq. Ca. Ab. 13. Eliz. c. 8. f. 5. and 21. Jac. 1. c. 17. f. 5. that all kinds
 288. of usury are contrary to good conscience.

2. R. Abr. 801. *Sect. 6.* And agreeably hereto it seemeth formerly to
 1. R. Abr. 18. have been the general opinion, that no action could be
 2. Roll. 239. maintained on any promise to pay any kind of use for the
 Palm. 293. forbearance of money, because that all such contracts were
 thought to be unlawful, and consequently void.

1. R. Abr. 25. *Sect. 7.* But it seems to be generally agreed at this day,
 2. R. Abr. 782. that the taking of reasonable interest for the use of money
 802. is in itself lawful, and consequently that a covenant or pro-
 Winch. 114. mise to pay it, in consideration of the forbearance of a debt,
 16. Ven. 198. will maintain an action; for why should not one who has an
 3. Keble 15. estate in money be as well allowed to make a fair profit of it,
 C. Car. 273. as another who has an estate in land; and what reason can
 Exod. c. xxii. there be, that the lender of money should not as well make
 1. 25. an advantage of it as the borrower? Neither do the passages
 Levit. c. xxv. in the *Mosaic* law, which are generally urged against the
 1. 36, 37. lawfulness of all usury, if fully considered, so much prove the
 Deuter. c. lawfulness of it; for if all usury were
 xxiii. v. 19, 20. against the moral law, why should it not be as much so in
 respect of foreigners, of whom the Jews were expressly
 allowed to take it, as in respect of those of the same nation,
 of whom alone they were forbidden to receive it? From
 whence it seems clearly to follow, that the prohibition of it
 to that people was merely political, and consequently doth
 not extend to any other nation.

AS TO THE THIRD GENERAL POINT, *viz.* How usury is restrained by statute,

I shall consider,

1. How far persons in general are restrained from the offence of usury.

† 2. How far the *Bank of England* may borrow money at more than the legal rate of interest.

+ 3. At what rate of interest monies may be borrowed on *Plantation securities*.

† 4. What rate of *brokerage* is allowed for raising money.

AS TO THE FIRST POINT, *viz.* How far persons in general are restrained from the offence of usury.

Stat. 8. By 12. Ann. c. 16. "No person whatsoever shall, upon any contract, take, directly or indirectly, for loan of any money, wares, merchandize, or other commodities whatsoever, above the value of five pounds, for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time." No more than five per cent. shall be taken for the loan of money.

Stat. 9. And by 12. Ann. c. 16. it is enacted, "That all bonds, contracts, and assurances whatsoever, for payment of any principal, or money to be lent, or covenanted to be performed upon, or for any usury, whereupon or whereby there shall be reserved or taken above the rate of five pounds in the hundred, as aforesaid, shall be utterly void." Contracts on which more than five per cent. is reserved or taken, are void.

Stat. 10. And by 12. Ann. c. 16. s. 2. "All and every person or persons whatsoever, which shall upon any contract take, accept, and receive, by way or means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any wares, merchandize, or other thing or things whatsoever, or by any deceitful way or means, or by any covin, engine, or deceitful conveyance, for the forbearing or giving day of payment for one whole year, or of and for their money or other thing, above the sum of five pounds, for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a (a) longer or shorter term, shall forfeit and" Whoever shall usuriously take more than five per cent. shall forfeit treble value. 3. Atk. 154. 3. Kebble 259. 1. Vent. 253. 3. Wulf. 259. (a) C. Jac. 25. Moor 644. 2. Leo. 38.

Noy 41. C. Car. 283. 4. Leonard 43. C. Eliz. 20. 2. Leo. 38.

B b 4

"lose

"loie for every such offence the treble value of the money,
 "wares, merchandize, and other things so lent, bargained,
 "exchanged, or shifted."

9. Atk. 340.

1. Vcz. 142.

"The expositions which were made of the former statutes of usury being equally applicable to this, which is penned almost in the very same words, I shall, in taking notice of the principal of them, endeavour to shew,

† 1. In what cases the usurious contract is void.

† 2. In what cases the usurer is liable to the penalties.

† 3. In what way the offender may be proceeded against.

† 4. What is required in the pleadings.

† 5. What evidence may be given in cases of usury.

† As to the first particular, *viz.* In what cases an usurious contract is void.

Dalif. 12.

Con. Ray. 197.

† Sect. 11. A contract made before the statute is no way within the meaning of it, and therefore it is still lawful to receive six *per cent.* in respect of any such contract.

Hodily v. Bel-

amy, 2. Burr.

1594-

† Sect. 12. A bond given at *Calcutta* in the *East-Indies*, where both parties reside at the time, on which nine *per cent.* is reserved, is not within the statute.

Salkeld 344.

28 And. 121.

Moor 752.

C. Jac. 32, 33.

Yelverton 47.

1. Burr. 1077.

7. Modern

128.

2. Strange

1249

L. Nisi P. 27.

Sect. 13. A bond made to secure a just debt, payable with lawful interest, shall not be avoided by reason of a corrupt agreement between the obligors, to which the obligee was no way privy; as where *A.* being indebted to *P.* in a hundred pounds, agrees to give him thirty pounds for the forbearance of that hundred pounds for a year, and gives him a bond of sixty pounds for payment of the thirty pounds, and for the payment of the hundred pounds enters into a bond of two hundred pounds together with *B.* for the payment of a true debt of one hundred pounds due from *B.* to *C.*

Lowe v.

Waller,

Dough. 737.

† Sect. 14. But it is now determined, that a bill of exchange given upon an usurious consideration is void, even in the hands of an indorsee for valuable consideration, without notice of the usury.

Sec. 15. The receipt of higher interest than is allowed by the statute, by virtue of an agreement subsequent to the first contract, does not avoid an assurance fairly made, and agreeable to the statute, but only subjects the party to the forfeiture of treble value; for the words are, "That all assurances for the payment of any principal, &c. whereupon or whereby there shall be reserved or taken above the rate of five pounds in the hundred, &c. shall be utterly void."

Pollard v. Scholey, Cro. Eliz. 20.
Ray. 191.
4 Burr. 22.
53.

† *Sec. 16.* So also where *A.* sold goods at three months credit, but stipulated that if the money was unpaid, the vendee should allow him a halfpenny an ounce for every month until the debt was discharged, which exceeded the legal rate of interest, yet the contract being a *bond fide* sale, and the subsequent agreement according to the usage in that particular branch of trade, it was not usurious; but it would have been otherwise if the sale had been merely colourable, to cover the loan and evade the statute.

Floyer v. Edwards, Cowp. 112.

† *Sec. 17.* So where *A.* was fairly indebted to *B.* in one thousand one hundred and twenty-five pounds, and on *A.* desiring time to pay it, *B.* insisted that one hundred and fifty pounds should be added to the debt, as he would have nothing to do with interest, and *A.* accordingly gave him five acceptances for these two sums, payable within fourteen months, it was held that the *bond fide* debt subsisted unimpeached by the subsequent usurious transaction.

Gray v. Fowler, 1 H. Bl. Rep. 462.

† *Sec. 18.* So in an action for usury, where it was proved to be the custom to discount bills in *London* for persons in the county, and to charge on such bills the usual discount of interest of five *per cent.* and also five shillings *per cent.* on the gross sum, as commission to answer the extraordinary expences of clerks, &c. kept for this business, it was adjudged not to be usury.

Winch v. Fen, Sett. B. R. Hilary Term, 1730.
Sec. 2. Term Rep. 52 notes.

† *Sec. 19.* So where a bill of exchange indorsed over is not duly paid, the indorsee may charge the indorser with interest, exchange, and other incidental expences, beyond the amount of five *per cent.* if such charges are reasonable, warranted by usage, and not made a colour for usury.

Aarist v. Thomas, 2 Term Rep. 52.

† *Sec. 20.* But if a sum of money is lent upon an agreement to pay legal interest, and a premium over and above is paid when the money is advanced, the security is void, although such premium do not of itself exceed the legal interest, but the penalty is not incurred till more than legal interest is actually received.

Fisher qui tam v. Beasley, Dougl. 255.

Sec.

Tanfield v. Finch, C. El. 27. *Sect. 21.* The grant of an annuity for lives not only exceeding the rate allowed for interest, but also exceeding the known proportion for contracts of this kind, in consideration of a certain sum of money, is not within the meaning of the statute, unless there were some underhand bargain for the security of the repayment of the principal or consideration-money.
Ld. Thurlow, Hil. 21.
Geo. 3. Brown's Rep. Chan. 93. Ld. Irnham v. Child.

Richards v. Brown, Cowp. 770. † *Sect. 22.* Therefore where *A.* applied to *B.* to borrow six hundred pounds, and *B.* agreed to lend it him, and actually advanced two hundred pounds of the money, on a deposit of certain securities, but when *A.* applied for the remaining four hundred pounds, *B.* by falsely pretending that he had not the money himself, but must get it from a friend, who, he said, never lent money but upon annuity at six years purchase, which was consented to and given by *A.* accordingly, and *B.* took five *per cent.* procuration-money, this loan, though in the shape of an annuity, was held usury.

Murray v. Harjng, 3. Will. 390. † *Sect. 23.* But where the loan was in the form of an annuity, and there was a clause in the deed, that the borrower might repay the sum given for the annuity at a future period, the Court held it not usury, although the clause seemed to make the sum advanced the loan, and the annuity the interest; for the repayment was casual, and depended on the borrower himself, so that it was not in the lender's power to have his money at all events.

2. Roll. 48.
2. Black. 263. *Sect. 24.* No contract is usurious by which the lender runs the hazard of losing all his money, both principal and interest; as where on the loan of a certain sum for a year, for the victualling of a ship, it is agreed that if the ship return, the lender shall have so many thousand fishes, at such a rate, which exceeds the interest allowed by the statute, and if the ship never return, or if it perish by unavoidable casualties of sea, fire, or enemies, that then he shall have nothing.
1. Lev. 54.
1. Sid. 27.
1. Atk. 340.

Shower's Rep. 8. *Sect. 25.* So also where on the loan of thirty pounds a bond is given for the payment of a hundred pounds, on the marriage of a daughter of one of the parties; "provided, that if either of them should die before, that then nothing should be paid."

Chesterfield v. Jansen, 1. Atk. 359. † *Sect. 26.* So a loan of five thousand pounds, to be paid ten thousand pounds on the death of *A.* in the life-time of

of *B.* is not a usurious contract within 12. Ann. c. 16. for in this case, if the contingency happen one way, the whole money is lost.

† *Sec. 27.* So where *A.* lent one hundred pounds to *B.* for four years without interest, but *B.* agreed to find the daughter of *A.* with meat and drink for that time, and also to take her into partnership, she to pay a moiety of the charges and losses of the business, and to receive half of the profits, it was held not to be usury, although the pecuniary advantages gained by *A.* might exceed five *per cent.* *Monist v. King, 2. Burr. 891.*

† *Sec. 28.* But if the borrower of money give a bond for the principal and interest at five *per cent.* and covenant at the same time also to pay to the lender a certain portion of the profits of a trade carried on by him in partnership with another person, this is an usurious contract, and the obligee cannot recover on the bond; for though he was to gain by the profits, he was not to stand to the losses of the trade. *Morse v. Wilson, 4. Term Rep. 353.*

Sec. 29. But it is clear, that if the interest only be hazarded on such a contract, and the whole principal secured, the whole is usurious. *3. Koble 304. Said to be good law, 1. Atk. 341. Cro. Jac. 507.*

Vide *C. Eliz. 741.*

Sec. 30. Also it hath been resolved, that an agreement to pay more than the lawful interest for the loan of a certain sum at such a day if *A. B.* shall be then alive, and if he shall be dead then to pay such a sum which is less than the principal, is void by the statute; for if such a contingency would exempt the case out of the statute, by the same reason twenty lives might be added, and the statute wholly evaded. *Bilton v. Dunham, Cro. Eliz. 642. Clayton's Case, 5. Co. 70.*

† *Sec. 31.* So also if the contingency be on a young and healthy person dying within three months, this shall be deemed usurious; for being so slight, it appears to be a mere evasion. *Richards v. Brown, Cowp. 770.*

Sec. 32. An assurance made in pursuance of a fair agreement for such interest as is allowed by the statute, shall not be avoided by the fault of the scrivener, who draws it up in such a manner as to bring it within the express letter of the statute. *C. Jac. 677. 2. Roll. 414. Het. 11. 2. Ven. 83. 3. Will. 336.*

Sec. 33. As where the parties agree, that five pounds shall be paid for the loan of a hundred pounds for a year, and the scrivener, in drawing the bond for it, doth, without the knowledge of the parties, who are illiterate persons, make the five pounds payable at the end of half a year. *Hard. 418. 2. Mod. 37.*

Sec.

Sect. 35. So where on the fair loan of a hundred pounds agreed to be paid with common interest, a mortgage is made for the hundred pounds, with a proviso, that it shall be void on payment of one hundred and five pounds at the end of one year, without any covenant for the mortgagor to take the profits till default be made of payment, so that in strictness the mortgagee is intitled both to the interest and profits.

Le Grange v. Hamilton,
4. Term Rep. 613.
S. C. 2. H. Bl. Rep. 144.

+ *Sect. 36.* So also if a bond be conditioned for the payment of one hundred pounds by quarterly payments of five pounds each, and interest at five *per cent.* this shall not be tendered a usurious contract by the indorsement of a memorandum thereon, "that at the end of each year *the sum's interest due* shall be added to the principal, and then the twenty pounds received in the course of the year deducted, and the balance remain as the principal."

Murray v. Harding,
3. Will. 390.
2. Bl. Rep. 359.

+ *Sect. 37.* So if *A.* for one hundred and twenty pounds grant an annuity of twenty pounds out of a living, with a promise of redemption in five years, and give bond for the performance, this is not usury, although the agent in drawing the deed state that it was a *loan* of money.

5. Co. 69.
C. Jac. 509.
Cowper 113.
2. Bur. 715.
C. Eliz. 64.
1. Lut. 464.
2. Bur. 891.
1. Atk. 342.
1. Atk. 351.
5. Co. 69.
See Mo. 397.
2. Anst. 16.
1. Atk. 350.
Cowper 79.
2. Str. 1243.

Sect. 38. The reservation of a greater sum than is allowed by the statute for interest, upon the non-payment of the principal at the end of the year, is not usurious within the statute, because it is in the power of the borrower to avoid the payment of the money so reserved, by paying the principal at the day appointed; yet it seemeth clear, that if it were originally agreed, that the principal money should not be paid at the time appointed, and that such clause was inserted only with an intent to evade the statute, the whole contract is void; for the construction of cases of this nature must be governed by the circumstances of the whole matter, from which the intention of the parties will appear in the making of the bargain, which, if it was in truth usurious, is void, however it may be disguised by a specious assurance.

Tate v. Welbings, 3. Term Rep. 531.

+ *Sect. 39.* Therefore the loan of money produced by the sale of stock, on an agreement that the borrower shall replace this stock on a certain day, or repay the money on a subsequent day with such interest in the mean time as the stock itself would have produced, is not usurious, though the interest exceed five *per cent.* unless the transaction be colourable, and a mere device to obtain more than legal interest.

Sect. 40. It is not (a) material whether the payment (a) ^{C. Jac. 251.} both of the principal and also of the usurious interest be ^{508.} secured by the same (b) or by different conveyances, but ^{2. Roll. 48.} that all writings whatsoever for the strengthening such a ^{2. Lev. 7, 8.} contract are void. ^{(b) Lutw. 273.} ^{466.}

Sect. 41. A contract referring to the lender a greater advantage than is allowed by the statute, is equally within the meaning of it (c), whether the whole be referred by way of (c) ^{C. Jac. 440.} interest, or in part only under that name, and in part by way of rent for a house, let at a rate plainly exceeding the known value.

† *Sect. 42.* But where *A.* agrees to pay *B.* for the purchase of two houses the sum of 430*l.* 1*0*s. and that 200*l.* of the money should be paid immediately, and the remainder at *Michaelmas*, with interest thereon at five per cent. and the houses being unoccupied, *A.* was to be let into immediate possession; but that if the said balance should not be paid at *Michaelmas*, *A.* agreed to pay, in lieu of interest on the same, a clear rent of 42*l.* a year, out of which *B.* was to permit interest at the rate of five *per cent.* in respect of the sum first paid to him to be deducted; this agreement was adjudged not to be usurious. ^{Spurrier v. Mayoss, F. Vezey's Rep. 529. in Chan. 11 July, 1792. S. C. 4. Bro. C. C. 28.}

Sect. 43. A second bond made after the forfeiture of a former, and conditioned for the receipt of interest according to the penalty of the forfeited bond, is as much within the statute as if it had been made before the forfeiture; for if such a practice should be allowed, nothing could be more easy than to elude the statute, and though the whole penalty be due in strictness to the obligee, yet the true principal debt is in conscience no greater after the forfeiture of the bond than it was before. ^{3. Keble 142; Con. Noy 2.}

† *Sect. 44.* So also if a promissory note, originally given upon a usurious consideration, be indorsed over to *A.* and *B.* gives *A.* a bond in consideration of his delivering up the note of hand, it seems admitted, that on the bond being put in suit, and the statute of Usury pleaded, the defendant may give evidence that the promissory note was originally given on a usurious consideration, and thereby destroy the validity of the bond. ^{Waton v. Shelley, 1. Term Rep. 296.}

Sect. 45. But although the deed, securing the repayment of the money borrowed, be drawn pursuant to the statute, yet if the whole of the principal be not fairly advanced, it is void.

Davidson v. Bernard Pitt, Easter Term 22. Geo. 3. Espin.N.P.11. † *Sec. 46.* As where *A.* having occasion for a sum of money applied to *B.* and offered to secure the sum on a mortgage, and *B.* said that all his money was in the funds, and that to sell out stock at that time would be a considerable loss, stock then standing at 73, but that if *A.* would take the stock at 75 he should have the sum he wanted, and accordingly received 1,500*l.* in stock valued at 75, which he sold out the same day at 72½, that being the then market price, it was held, that the executor of the mortgage could not maintain an ejectment on the mortgage deed.

Pratt v. Willey, Sit. Mich. 14. Geo. 3. Espin.N.P.40. † *Sec. 47.* So also if the discounter of a bill of exchange make the holder take goods at a higher price than they are worth upon a fair estimate, it is usury, for a party by substituting goods instead of money shall not, by colour of their pretended value, take above legal interest, and evade the statute.

Maffae v. Downing, Stra. 1243. † *Sec. 48.* So if *A.* indorse a note of 200*l.* to *B.* who advances *A.* one hundred and ninety-seven pounds three months before it is due, and at the end of the three months takes another note on advancing 3*l.* for other three months, this is usury.

Moor v. Batie, Amb.Rep. 371. † *Sec. 49.* So also where *A.* lent *B.* several sums of money on mortgage, and *B.* having occasion for more, *A.* advanced him 1,900*l.* by selling out 1,000*l.* *South-Sea Annuities*, which at that time were under par, and sold at a loss of 76*l.* upon the whole, and paid him the money for which they sold, and took a mortgage from him for 1000*l.* at five *per cent.* interest, with a covenant to reduce the interest to four *per cent.* if paid within such a time, it was held usurious.

Lowe v. Walker, Dougl. 736. † *Sec. 50.* So where upon a negotiation for a loan of money the lender pretends that it is inconvenient to him to advance money, but furnishes the borrower with goods to the amount of the sum wanted, and the goods are afterwards sold by the intervention of a broker recommended by the lender, and a security taken by the lender, payable at a future day, for a sum far exceeding the value of the goods, and five *per cent.* interest, this is a usurious loan, and the security is void.

Jessens v. Brook, Cwyp. 745. † *Sec. 51.* It seems also that if *A.* in consideration of advancing 45*l.* for which he takes the borrower's note of hand, payable on demand, stipulates to have half of the profits upon a resale of cert in goods intended to be purchased by the borrower with the money, and two hours
after

after the purchase demands payment of the note, and the same night puts a person into possession jointly for himself and the borrower, and the goods upon a resale produce only a neat profit of five pounds, this is a usurious transaction.

As to the second particular, *viz.* In what cases the usurer is liable to the penalties of 12. Ann. c. 16.

† *Sect. 52.* To incur the penalties of usury there must be, FIRST, a corrupt contract between the parties; SECONDLY, monies or other things lent; THIRDLY, above five *per cent.* received by the lender for forbearance; and wherever these three matters concur, the offence of usury is compleated, although no time is mentioned with respect to repayment of the principal, for the offence may be committed though the principal money may never be paid. Lloyd *qui tam* Williams, 3. Will. 255 to 262.

† *Sect. 53.* For although the very contract avoids the security, yet the treble value is not forfeited until something be *taken* above the legal rate of interest; and therefore, where *G.* borrowed a hundred pounds of *B.* on his bond, conditioned to repay the same at six months, with five *per cent. per annum*, and gave two guineas to *B.* at the time the money was advanced as a premium for the loan, and the principal and two pounds ten shillings interest were repaid at the end of six months, it was held, that the bond was void, but that the usury was not committed until the half year's interest was received, for the penalty is only incurred by "taking, accepting, and receiving more than legal interest." Dougl. 224. 2.B1.Rep.796.

† *Sect. 54.* So where *A.* gave credit to *B.* for jewels to a certain amount, but *B.* not being able to raise money on them desired that *A.* would exchange them for old plate; and *A.* said that old plate was as good as money, and accordingly gave him in money the value of as much old plate as was less by a hundred pounds than what the jewels had been sold for, for the whole amount of which *B.* was to stand indebted; it was held that *A.* was not liable to the penalty of the statute. Johnson *qui tam* Pickett, B. R. Easter Term. 1785. Espinasse N.P. 41.

Sect. 55. The receipt of interest before the time when it is in strictness due, being voluntarily paid by the debtor, for the greater convenience of the creditor, or for any other such like consideration, without any manner of corrupt practice, or any previous agreement of this kind at the making of the first contract, does not make the party liable to the forfeiture of the treble value. 1. Bull. 17. 20. Ycl. 30, 31. Nov. 171. 2. Keble 620. Con. 1. Leach. 96.

† *Sect.*

Noy 37.
1. Leon. 96.

Sect. 56. In an assurance for the payment of fifty shillings for the use of one hundred pounds for six months, the computation shall be by calendar and not by lunar months, because by the latter the interest would exceed the rate allowed by the statute.

As to the third particular, *viz.* In what way the offender may be proceeded against.

+ *Sect. 57.* By 12. Ann. c. 16. s. 2. it is enacted, "That the one moiety of all the forfeitures shall be to the queen, and the other moiety to him or them that will sue for the same, in the same county where the several offences are committed, and not elsewhere, by action of debt, bill, plaint, or information, in which no essoin, wager of law, or protection shall be allowed."

+ *Sect. 58.* But by 31. Eliz. c. 5. "All actions, suits, bills, indictments, or informations, on any penal statute where the penalty is limited to the queen only, shall be brought within *two years* after the offence committed, and when limited to the queen and any other person, within *one year* next after the offence committed; but in default thereof, then the same may be brought for the queen any time within two years after that year ended."

Rex v. Upton,
Stra. 816.

+ *Sect. 59.* It seems, that an indictment will lie on the 12. Ann. c. 16. although that mode of proceeding is not mentioned in the statute.

Fisher v. Bea-
ley, Doug.
235.

+ *Sec. 60.* And it is decided, that an action may be brought for the *penalty*, though more than a year has elapsed since the payment of the *premium*, if it be not a year after what has been paid exceeded legal interest.

Low v. Wal-
ter, Doug.
698. notes.

+ *Sec. 61.* Also an action will lie to recover back what has been paid on a usurious contract above the principal and legal interest.

Fitzroy v.
Gwillim, 1.
Term Rep.
153.

+ *Sec. 62.* But it is decided, that a person who has pledged goods as a security for money borrowed on a usurious contract, cannot maintain *trover* against the lender unless he has paid, or tendered to pay, the sum actually advanced, with the legal interest due thereon.

As to the fourth particular, *viz.* What is required in the pleadings.

Sec. 63. A fine (*a*) levied, or a judgment suffered, in pursuance of a usurious contract, may be avoided by an averment of the corrupt agreement, as well as any common specialty or parol contract.

(*a*) 3. C. 80.
9. Co. 36.
1. Jun. 207.
1. Roll. 41, 42.
2. Ven. 83, 118.
1. Sid. 182.

Sec. 64. In an *assumpsit* (*b*), if it appear, either upon the evidence or from the plaintiff's own express shewing in his declaration, that the contract was usurious, he cannot recover. Or the court of chancery may direct an issue to try the usurious contract.

(*b*) Salk. 22.
Skin. 411, 412.
Lut. 273.
Cro. Eliz. 588.
Cowper 728.

Sec. 65. But a *specialty* cannot be avoided by usury appearing on evidence or on the face of the condition, but it must be pleaded.

Sec. 66. In pleading a usurious contract by the way of bar to an action, you must set forth the whole matter specially, because it lay within your own privacy; but in an information on the statute for making such a contract, it is sufficient to set forth the corrupt bargain generally, because matters of this kind are supposed to be privily transacted, and such information may be brought by a stranger.

1. And. 49.
1. Sid. 285.
3. Modern 35.
1. Keble 629.
Noy 143.
Cro. Jac. 415.
Vide C. Car. 501.
Precedents.
Jones 413.

+ *Sec. 67.* To an action on a note, if the defendant plead that it was given on a corrupt agreement, the plaintiff may reply, that it was given for a just debt; *allege* *h*, that it was agreed *modo et forma*, as the defendant pleads.

Cooke v.
Ratchiffe,
B. R. H. 287.

Sec. 68. (*c*) In every information on the statute of Usury, it is necessary expressly to set forth the place where the corrupt bargain was made.

(*c*) 1. Leon. 96, 97.

+ *Sec. 69.* It is also necessary to lay the time precisely; and therefore, where a security was dated on the 14th, but not signed till the 16th, and it was laid on the 14th, it was held bad.

Cowp. 671,
672.

Sec. 70. If a usurious contract in the county of *D.* be pleaded in bar to an action on a bond said to be made in the county of *E.* the trial shall be in the county of *D.* because the ground of the matter is the usurious contract, and the bond is confessed by the plea.

1. Leon. 148,
149.

Scott v. P. 3. + Sect. 71. If *A.* by deed executed in *London*, for securing the repayment of money lent to *B.* is appointed receiver of *B.*'s rents in *Bedford*; with a pretended salary which enables him to retain usurious interest, and he accordingly receives the rents in *Bedford*, but settles the account in *London*, and *there* pays the balance on which the usurious interest is allowed, the offence is committed in *London*, and the venue in a *quidam* action for the penalty is properly laid there.

Richards v. Brown, Dougl. 114. + Sect. 72. In an action of usury, a variance between the name of the attorney in the warrant and in the declaration, may be amended by changing the name in the warrant to that in the declaration, although after error brought and the venue assigned for error; but *names* and *dates* in such declaration cannot be amended after the time limited for trying the action is expired.

Tate v. Wel- + Sect. 73. A corrupt agreement for the forbearance of money *until one or the other of two days*, at the option of the borrower, must be pleaded, according to the facts in the alternative; and if it be stated as an absolute forbearance until *one* of those days, the evidence will not support the plea.

As to the fifth particular, *viz.* What *relaxation* may be given in cases of usury.

Hardres 337. Co. Lit. 6. b. 2. Roll. 68. 2. Raym. 171. b. 2 c. 40. f. 2. 1. Vent. 25. 1. Salk. 283. Sect. 74. He who hath agreed to pay money upon a usurious contract, shall not be admitted to give evidence upon an information against the usurer, unless he have paid off the whole debt; for by such means a man might avoid his own act and deed.

Abraham's qui tam v. Brown. 4 Burr. 2251. + Sect. 75. But in an action on the statute, where money was usuriously lent on the pledge of jewels greatly exceeding in value the principal sum, and the declaration only stated the corrupt bargain and loan, without noticing any bond, assurance, or contract, whereupon or whereby usury was received or taken, it was determined, on great deliberation, that the borrower is a competent witness not only to prove the repayment of the principal money, but also the usurious transaction.

Masters and son v. Dwyer. 2 Term Rep. 466. + Sect. 76. But in a *quidam* action of usury against an assignee of a bankrupt for taking usurious interest on a loan of money to the bankrupt before his bankruptcy, the bankrupt is not a competent witness to prove the offence, if he has not obtained his certificate, or repaid the money, notwithstanding

withstanding he is ready to release to his assignors all benefit which may arise from the discharge of this debt in particular, and all claim and allowance of surplus, in general, and notwithstanding has proved his demand for the money lent, under the commission.

+ Sect. 77. But it has been decided, that if *A.* the indorsee of a promissory note, indorse it to *B.* and *A.* gives a bond to *K.* in consideration of his setting up this note, *A.* is not a competent witness, in an action on the bond to which the Statute of Wills applies, to prove that the consideration for the note was a bribe; for though there is no objection to his giving evidence on that point, because by delivering the bond he has up the money, yet it is a rule of law, that no person who has given a bond or deed shall ever be permitted to give evidence to invalidate the instrument which he has so executed. Watson v. Botsford, 1 Term Rep. 369.

Sect. 78. An information for money lent contrary to the Statute of 1774 cannot be supported by evidence of a contract on a bargain, according to the Statute. 1 Conn. 556. 1 Mass. 112. 1743. 1 Watson 286.

+ Sect. 79. Put in an action for the penalty, if the Statute state a debt the sum of 1000 to have been lent as a bribe, the bond in which the party confesses evidence that the money was put in money and the rest in goods of a known value, which the party receiving the loan agreed to take as cash, will support the declaration. 1 Conn. 556. 1 Mass. 112. 1743. 1 Watson 286.

+ Sect. 80. But if a plaintiff declares upon a corrupt contract on the twenty-third of December 1774, for the sum of 1000, payment to the twenty-third of December 1776, evidence of a contract on the twenty-third of December 1774 for two years is a fatal variance. 1 Conn. 556. 1 Mass. 112. 1743. 1 Watson 286.

As to THE SECOND POINT, viz. How far the Bank of England may borrow money at more than the legal rate of interest.

+ Sect. 81. It is enacted by 3. Geo. 1. c. 8. f. 19. "that the Bank of the Governor and Company, of the Bank of England shall have authority to borrow or take up money upon any contracts, bills, bonds, or obligations, under their common seal, or upon credit of their capital stock, or otherwise, for any time, or to be paid upon demand, and at such rate of interest as they shall think fit, although the same shall happen to exceed the rate of interest allowed by law, and to give such security to the lenders as they shall approve." The Bank of England v. The Bank of the Governor and Company, 1754. 1 Burr. 349.

See Stapleton v. Conway, 3. Atk. 727. As to the THIRD POINT, viz. At what rate of interest monies may be borrowed on *plantation security*,

† *Stat. 82. By 14. Geo. 3. c. 79. s. 1.* it is recited, that “ Large
 “ sums of money have been and may be lent, by his Majesty’s
 “ subjects in *Great Britain*, upon mortgages, or other secu-
 “ rities, on estates in the kingdom of *Ireland*, and also in
 “ his Majesty’s colonies or plantations in the *West-Indies* ;
 “ which loans have been found to contribute greatly to the
 “ improvement of the said kingdom, colonies, and planta-
 “ tions : and whereas it has frequently been found conven-
 “ nient to execute such mortgages or securities, and the
 “ transfers or assignments thereof, in *Great Britain* : and
 “ whereas doubts have arisen, whether such loans, and the
 “ mortgages or securities for the same, and the transfers
 “ or assignments thereof, when made and executed in *Great*
 “ *Britain*, are as valid and effectual as when made and exe-
 “ cuted in the said kingdom of *Ireland*, colonies, planta-
 “ tions, or dominions ; and, by reason of an act passed in
 “ the twelfth year of the reign of her late Majesty Queen
 “ *Ann*, intituled, *An Act to reduce the Rate of Interest, with-*
 “ *out any Prejudice to Parliamentary Securities*, whether such
 “ mortgages or securities are valid and effectual where the
 “ rate of interest thereby reserved or made payable is more
 “ than five pounds *per centum*, though such interest does not
 “ exceed the rate of interest allowed and established by the
 “ law of the kingdom of *Ireland*, colony, plantation, coun-
 “ try, or place, in which the estates comprised in such
 “ mortgages or securities respectively are ; and whether his
 “ Majesty’s subjects in *Great Britain* have not or may not
 “ become subject or liable to penalties or forfeitures by re-
 “ ceiving or taking interest for the sums of money really
 “ and *bond fide* advanced or lent on such mortgages or secu-
 “ rities, at the rate of interest allowed and established by
 “ the law of the kingdom, colony, plantation, country, or
 “ place, wherein the mortgaged estates respectively lie : For
 “ obviating such doubts, IT IS ENACTED, that all mortgages
 “ and securities, which, by any of his Majesty’s subjects,
 “ already have been made and executed in *Great Britain*, of
 “ or concerning any lands, tenement, hereditaments, slaves,
 “ cattle, or other things, living and being in the kingdom of
 “ *Ireland*, or in any of the said colonies, plantations, or do-
 “ minions, or any estate or interest therein, to any of his
 “ Majesty’s subjects, for securing the repayment of the sums
 “ of money thereon respectively really and *bond fide* advanced
 “ and lent, with interest for the same ; and all bonds, co-
 “ venants, and securities, for payment of the same sums of
 “ money and interest respectively, and all transfers or as-
 “ signments, which have been made and executed in *Great*
 “ *Britain*,

12. Ann.

All mort-
 gages, &c. of
 lands in Ire-
 land, or the
 colonies, &c.

“ *Britain*, of such mortgages, securities, or bonds, to any
 “ of his Majesty’s subjects, shall be as good, valid, and
 “ effectual, to all intents and purposes whatsoever, as such
 “ mortgages, securities, bonds, covenants, transfers, or as-
 “ signments, would have been, if the same had been made
 “ and executed in the kingdom, island, plantation, country,
 “ or place, where the lands, tenements, hereditaments, slaves,
 “ cattle, or other things, mentioned and comprised in any
 “ such mortgage, security, transfer, or assignment as afore-
 “ said, severally lie or are; and that none of his Majesty’s
 “ subjects in *Great Britain* shall be subject or liable to any
 “ of the penalties or forfeitures in the said act made in the
 “ twelfth year of her said late Majesty’s reign, by receiving
 “ or taking interest for the sum or sums of money really
 “ and *bonâ fide* advanced or lent on any such mortgage, se-
 “ curity, bond, covenant, transfer, or assignment as afore-
 “ said, at the rate of interest allowed and established by the
 “ law of the kingdom, colony, plantation, country, or
 “ place, wherein the mortgaged premises respectively lie or
 “ are.”

to be as effect-
 tual as if exe-
 cuted in the
 place, &c.

and no British
 subject liable
 to penalties.

† *Stat. 83.* By 14. Geo. 3. c. 79. s. 2. “ All mortgages
 “ and securities which, by any of his Majesty’s subjects,
 “ after the passing of this act, shall be made and executed
 “ in *Great Britain*, of or concerning any lands, tenements,
 “ hereditaments, slaves, cattle, or other things, lying and
 “ being in the kingdom of *Ireland*, or in any of the said
 “ colonies, plantations, or dominions, or any estate or in-
 “ terest therein, to any of his Majesty’s subjects, for se-
 “ curing the repayment of the sums of money thereon re-
 “ spectively to be really and *bonâ fide* advanced and lent,
 “ with interest for the same; and all bonds, covenants, and
 “ securities, for payment of the same sums of money and
 “ interest respectively, and all transfers or assignments
 “ which, after the passing of this act, shall be made and ex-
 “ ecuted in *Great Britain*, of such mortgages, securities, or
 “ bonds, to any of his Majesty’s subjects, shall be as good,
 “ valid, and effectual, to all intents and purposes whatsoever,
 “ as such mortgages, securities, bonds, covenants, transfers,
 “ or assignments, would be, if the same were made and exe-
 “ cuted in the kingdom, island, plantation, country, or
 “ place, where the lands, tenements, hereditaments, slaves,
 “ cattle, or other things to be mentioned or comprised in
 “ any such mortgage, security, transfer, or assignment as
 “ aforesaid, severally lie or are; and that none of his Ma-
 “ jesty’s subjects in *Great Britain* shall be subject or liable
 “ to any of the penalties or forfeitures in the said act made
 “ in the twelfth year of her said late Majesty’s reign, by re-
 “ ceiving or taking interest for the sum or sums of money

Transfers of
 such mort-
 gages, &c.
 valid.

"to be really and *bona fide* advanced or lent on any such mortgage, security, bond, covenant, transfer, or assignment as aforesaid, so as the interest so to be received or taken do not exceed the rate of six pounds for one hundred pounds for a year; the aforesaid act of parliament, or any other law or statute, to the contrary notwithstanding."

Not to make good such mortgage, if advanced more than lands worth.

+ *Stat. 84.* But by 14. Geo. 3. c. 79. s. 3. it is "Provided, that this act shall not make good, valid, or effectual, any such mortgage, security, bond, covenant, transfer, or assignment, where the lender or lenders of any sum or sums of money has or have knowingly advanced or lent, or shall knowingly advance or lend thereon more money than the lands, tenements, hereditaments, slaves, cattle, or other things in such mortgages, securities, transfers, or assignment, mentioned or comprised, or to be mentioned or comprised, it was, were, or shall be, at the time of times of advancing or lending such sum or sums of money as aforesaid, really and *bona fide* worth, to be sold."

Borrowing sums exceeding the value, &c. to forfeit triple the value.

+ *Stat. 95.* By 14. Geo. 3. c. 79. s. 4. "All and every person or persons borrowing any sum or sums of money, under the authority of this act, upon any such lands, tenements, hereditaments, slaves, cattle, or other things as aforesaid, exceeding the value which the same shall be, at the time of borrowing such sum or sums of money, really and *bona fide* worth, to be sold, over and above all circumstances which shall then affect the same, shall forfeit treble the value of the sum borrowed, the one half to be paid to the informer, the other half to the treasurer of the royal hospital for leprosy at *Green St.* in the county of Kent, or to his fiduciant deputy or agent, for the use of the said hospital."

Mortgages to be registered in the colony, &c.

+ *Stat. 96.* By 14. Geo. 3. c. 79. s. 5. it is "Provided, that all such mortgages, or other securities granted under the authority of this act, by which such lands, tenements, hereditaments, slaves, cattle, or other things are intended to be charged or affected, shall be registered within the kingdom, island, colony, plantation, country, or place, where the said lands, tenements, hereditaments, slaves, cattle or other things, severally lie or are, within the time limited by the laws of such kingdom, island, colony, plantation, country, or place, otherwise the same shall be subject to the several provisions and penalties contained in the said act made in the twelfth year of her late Majesty queen Anne, in such manner as the same would have

"been

“ been if this act had never been passed, unless the mort-
 “ gage, or other person or persons, for whose behoof such
 “ mortgage or other security shall have been made, or
 “ granted, shall have, *bonâ fide*, used his or their utmost en-
 “ deavour to cause the same to be registered within the
 “ time herein before limited for that purpose.”

+ Sec. 87. It has been decided, that this statute relates *Dowd v.*
 solely to securities on *land* in *Ireland* and *the colonies*; and *1777.*
 therefore, where *A.* contracted with *B.* for the sale of an *1800 Term Rep*
 estate in the *West Indies*, and it was agreed that part of the *225.*
 purchase money should remain secured by the bond of *B.*
 and *C.* and that bond was afterwards cancelled, and another *v. Bro. C. C*
 executed in *England* by *B.* and *D.* retaining *10 per cent.* 647.
 interest (in the same manner as the former one), such con-
 tract was *usurious*.

As to the *FOURTH POINT*, viz. What rate of *interest*
 is allowed for raising of money.

+ Sec. 88. By 17. Ann. c. 16. § 2. it is enacted, “ That No person
 “ all and every scrivener, and clerk, broker and underwriter, or any such
 “ solicitor and solicitor, driver and drivers of business for money, for
 “ contract’s, who shall, in the month of January, next, or any
 “ of September, take or receive, directly or indirectly, any sum, for
 “ sum or sums of money, or labour, or work, or things, for
 “ brokerage, soliciting, charging, or procuring, to be lent, or
 “ forbearing of any loan or loans of money, or forbearing or
 “ the rate or value of five shillings for the loan or for-
 “ bearing of one hundred pounds for a year, or for a shorter
 “ or above twelve pence, ever and above the same duties,
 “ for making or renewing of the same, or for the loan or
 “ forbearing thereof, or for any contract bond or bill con-
 “ cerning the same, shall forfeit for every such offence
 “ twenty pounds, with costs of suit, to be paid or payment
 “ ment for half a year: the one moiety, for all which for-
 “ feitures to be to the queen’s most excellent Majesty, her
 “ heirs and successors, and the other moiety to one of them
 “ that will sue for the same, in the same court where the
 “ several offences are committed, and not elsewhere, by
 “ action of debt, bill, plaint, or information, in which no
 “ effoin, wager of law, or protection, shall be allowed.”

+ Sec. 89. And it is said, that if a scrivener make a con- *Barter v.*
 tract for more than five shillings for procuring the loan of one *1777.*
 hundred pounds, that such contract is void, though the *225.*
 statute itself doth not mention that it shall be so.

Solicitors, &c.
who take
more than
10s. per 100l.
for procuring
money for an-
nuities, pu-
nished, &c.

† *Sec. 90.* By 17. Geo. 3. c. 26. s. 7. it is enacted, "That
" all and every solicitors and folicitor, scriveners and scri-
" vener, brokers and broker, and other persons or person,
" who, from and after the passing of this act, shall ask, de-
" mand, accept or receive, directly or indirectly, any sum
" or sums of money, or any other kind of gratuity or re-
" ward, for the soliciting or procuring the loan, and for
" the brokerage of any money that shall be actually and
" *bonâ fide* advanced and paid as and for the price or confi-
" deration of any such annuity or rent-charge, over and
" above the sum of ten shillings for every one hundred
" pounds so actually and *bonâ fide* advanced and paid, shall
" be deemed and adjudged guilty of a misdemeanor; and
" being lawfully convicted of such offence in any court of
" assize, *oyer and terminer*, or general gaol delivery, shall and
" may, for every such offence, be punished by fine and im-
" prisonment, or one of them, at the discretion of the
" court, and that the person or persons who shall have paid
" or given any sum or sums of money, gratuity, or reward,
" shall be deemed a competent witness or witnesses to prove
" the same."

Per BULLER,
Justice, in Li-
vingston's case,
Sitt. West.
B. R. 1787.
See *Rex v.*
Lookup.

† *Sec. 91.* It hath been ruled, that an indictment may be
brought for this offence after two years have expired from
the commission of the offence; for that the 31. Eliz. c. 5.
which limits all proceedings by indictment, &c. on a penal
statute, to two years, only restrains proceedings after that
time where the penalty is specific, and not where the fine
is discretionary.

CHAPTER THE EIGHTY-THIRD.

OF MAINTENANCE.

MAINTENANCE is commonly taken in an ill sense, Co. Lit. 268. and, in general, seemeth to signify an unlawful taking in hand, or upholding of quarrels or sides, to the disturbance or hindrance of common right. 2. Inst. 208. 212. 563.

MAINTENANCE is said to be twofold.

SECT. 2. FIRST, Ruralis, or in the country; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtlety; or where one stirs up quarrels and suits in the country, in relation to matters wherein he is no way concerned: and this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not, but is said not to be actionable. Co. Lit. 36. 2. Inst. 213. 1. Ric. 1. c. 4. 2. Ric. 115.

SECT. 3. SECONDLY, Curialis, or in a court of justice, where one officiously intermeddles in a suit depending in any such court which no way belongs to him, by assisting either party with money, or otherwise, in the prosecution or defence of any such suit. Pult. 25. 2. Inst. 212. 563. 2. R. Abr. 115. 77.

Of this second kind of maintenance there seem to be three species:

FIRST, Where one maintains another without any contract to have part of the thing in suit, which generally goes under the common name of *Maintenance*. Co. Lit. 368.

SECONDLY, Where one maintains one side, to have part of the thing in suit, which is called *Champerty*.

THIRDLY, Where one laboureth a jury, which is called *Embracery*.

For the better understanding of the first of the above-mentioned species, I shall examine,

1. What shall be said to amount to an act of maintenance.
2. In what respects some such acts may be justified.
3. How far offences of this kind are restrained by the common law.
4. How far by statute.

As to THE FIRST POINT, &c. What shall be said to amount to an act of maintenance.

Scot. 4. It seemeth clear, that whoever assists another with money to carry on his cause, as by retaining one to be of counsel for him, or otherwise bearing him out in the whole or part of the expence of the suit, may properly be said to be guilty of an act of maintenance, as it seems to be taken for granted in the (a) books cited in the margin.

(a) 23. H. 6. 7. 12.
34. H. 6. 25, 26. 9. R. 4. 32. 21. H. 7. 48. 6. R. 1. 9. 1. E. 3. 3. 31. H. 6. 9.
H. Maint. 7. 14. 17. 2. 14. 43, 44. 32. 2. R. Abr. 248. 6. M. D. 2. Rol 77.

Scot. 5. Also it is said, that not only he who lays out his money to assist another in his cause, but also that he who by his own help or interest takes him that expence which he might otherwise have put to, or but endeavours to do, is also guilty of maintenance, as where (b) one persuades, or but endeavours to persuade, a man to be of counsel for another person.

(b) 23. H. 6. 7. 12.
34. H. 6. 25.
9. R. 4. 32.
Mant. 2. 7. 23.

Scot. 6. Also it is said, that all such persons may properly be called maintainers, who give, or but endeavour to give, any other kind of assistance to either of the parties in the management or the suit depending between them; as (c) by opening the evidence to the jury; or by (d) giving evidence falsely without being called upon to do it, or by speaking in the cause (e) as one of counsel with the party; or by (f) retaining an attorney for him; or (g) perhaps for himself, going along with him to enquire for a person learned in the law.

(c) 23. H. 6. 5.
M. D. 14.
C. W. 1. 75.
(d) 23. H. 6. 5.
21. H. 6. 43.
Ment. 5. 1.
M. D. 12.
2. R. Abr. 24.
(e) H. 6. 7. 2. (f) 2. R. Abr. 543. (g) 19. E. 4. 2. 21. E. 4. 25. H. 6. 15.

Scot. 7. Also it hath been said, that those shall come under the like action, who give any such countenance to another in relation to any such thing; as where one of great power and interest says (h) publicly, that he will spend twenty pounds on one man, or that he will give twenty pounds to those who join with him in such a suit, or

(h) 23. H. 6. 1.
M. D. 14.
M. D. 14.

penny or not; or where such a person (*a*) comes to the bar (*a*) 22. H. 6. 6.
with one of the parties, and stands by him while his cause 11. H. 6. 39.
is tried, whether he say any thing or not; for such kinds of 19. B. 4. 3.
practices do not only tend to discourage the other party Mann. 51.
from going on in his cause, but also to intimidate juries
from doing their duty.

SECT. 8. But it seems, that a bare (*b*) promise to main- (*b*) 6 H. 7. 13.
tain another is not in itself maintenance, and so it holds there B. Champ. 9.
in respect of the public manner in which, or the power of
the person by whom, it is made.

SECT. 9. Also it is said to be as much maintenance for a (*c*) 10 R. Main. 40.
juror, as for any other person, to exhort a judge to give 17 B. 4. 12.
judgment or voting to the verdict, if such a juror has 17 B. 4. 5.
given his verdict he has nothing more to do. 12. R. M. 39.

SECT. 10. But it is said to be no maintenance for a juror
to exhort his companions to join with him in giving such
a verdict as seems to him to be right.

SECT. 11. However it seems clear, (*d*) that a man is in no (*d*) 12. B. 4. 14.
danger of being judged guilty of an act of maintenance for 19. B. 4. 2.
giving another friendly advice, what advice is proper for 22. H. 6. 6.
him to bring for the recovery of a cause, or, what meth- B. Mann. 17.
od it is best to take to himself, in any suit, or trial, or R. Abr. 118.
what counsellor or attorney (*d*) to do his business, most 1 Inst. 364.
effectually; for it would be extremely hard to make such 12. R. M. 21.
neighbourly acts of kindness, which seem to be comen- 1. R. M. 131.
dable than blame-worthy, to come under the notion of main- 1. R. M. 131.
tenance, which always seems to imply a contentious and 1. Leon. 48.
over busy intermeddling in other men's matters, in which
respect it is so highly criminal. Yet it is said, that a man
of great power, not learned in the law, may be guilty of
maintenance, by telling another who asks his advice, that
he has a good title.

SECT. 12. Also it hath been said, that no one can be guilty 22. H. 6. 62.
of maintenance in respect of any money given by one to 12. R. M. 12.
another before any suit is actually commenced, and it 1. R. M. 131.
plainly appears, that it was given to the plaintiff, to assist 1. R. M. 131.
him in the prosecution or defence of a cause, which 1. R. M. 131.
which afterwards is actually brought into the court, and 1. R. M. 131.
be as great a misdemeanor in the nature of the thing, as 1. R. M. 131.
equally criminal at common law, as it is, when it is 1. R. M. 131.
given after the commencement of the suit, and yet it 1. R. M. 131.
it may not in strictness come under the notion of main- 1. R. M. 131.
tenance.

47. E. 1. 2. 17. *Sec. 13.* However it is certain, that one may as properly be laid to be guilty of maintenance, within the meaning of the words "*adhuc manu tenet*," in an action of maintenance, for supporting another after judgment, as for doing it hanging the plea; because the party grieved may be discouraged thereby from bringing a writ of error or attain.

AS TO THE SECOND POINT, *viz.* In what respects some acts of this kind may be justified,

I shall consider the following particulars:

1. How far they are justifiable in respect of an interest in the thing in variance.
2. How far in respect of kindred or affinity.
3. How far in respect of other relations.
4. How far in respect of charity.
5. How far in respect of the protection of the law.

As to the first of these particulars, *viz.* How far some acts of this kind are justifiable in respect of an interest in the thing in variance,

(a) 19. E. 4. 2. *Sec. 14.* It seemeth to be clearly agreed, that if (c) a tenant in tail or for life be impleaded, he in remainder or reversion may lawfully maintain the defence of the suit with his own money.

(b) 6. E. 4. 2. *Sec. 15.* And upon the like ground it seems to be clear, that if in an action of trespass, &c. brought by or against a (b) lessee for years, the inheritance come into question, the lessor may lawfully maintain his lessee, and give (c) evidence to prove the inheritance in himself, for though the judgment which may be given against the lessee cannot directly bind his inheritance, yet the verdict may be a prejudice to his title, being given on a supposal of his not having a good one.

Sec. 16. Also it hath been admitted as clear law, that if one feued in fee of certain land bring an action of trespass *quare clausum fregit*, and then alien the land, and afterwards in the trial of the cause it be questioned whether the inheritance at the time of the supposed trespass belonged to the plaintiff or defendant, the alienee may lawfully produce evidence to prove that the inheritance was in the plaintiff, because the plaintiff's title must be one his own

Sec. 17. Also it hath been said, that not only those who have a certain interest, but also that those who have a bare contingency of such an interest in the lands in question, which possibly may never come *in esse*, may in like manner lawfully maintain another in an action concerning such lands; from whence it follows, that if I grant to *B.* that if my lessee for life shall die during my life, that then he shall have the land for ten years, and after my like be impleaded, *B.* may maintain him.

Sec. 18. And it hath been said, that not only those who have a contingency of such an interest, which it is in no man's power to bar them of, if the contingency happen, may justify such maintenance, but that those also shall have the same privilege, who by the act of GOD. have the immediate possibility of such an interest, though it be in the power of another to deprive them of it, and therefore that an heir apparent, or the husband of such heir, may lawfully maintain the ancestor in an action concerning the inheritance of the land whereof he is seised in fee.

Sec. 19. But it is said, that the grantee of a reversion, before the late statute for amendment of the law which made all attornment needless, could not maintain the tenant of the land without attornment, because his possibility was wholly created by the act of the party, and could not be executed but by the voluntary attornment of the tenant, which there was no remedy to compel him to make by the common law; but perhaps the authority of this opinion may be questionable, especially if such grant were made for good consideration: for since those who have only an equitable interest in lands, may lawfully maintain others in actions relating to those lands, as shall more fully be shewn in the twenty-first section, and since the grantor in equity shall stand intrusted for the grantee after the grant, and the tenant may be enforced by a court of equity to attorn to him, I do not see any good reason why such grantee should be esteemed such a stranger to the land, that he may not lawfully defend an action concerning it, in the event whereof he is so nearly concerned.

Sec. 20. But it seems clear, that he who is bound to warrant lands, may lawfully maintain the tenant in defence of his title, because he is bound by the warranty to render other lands to the value of those which shall be evicted.

Sec. 21. Also it seems to be agreed, that he who hath an equitable interest in lands or goods, or even in a *chose in action*, may lawfully maintain another in an action relating thereto;

thereto; and therefore it seemeth to be clear, that a man may lawfully maintain (*a*) those who are infeoffed of lands in trust for him, in an action concerning those lands, and that if he sell them to another, the vendee shall have the same privilege.

(*a*) 34. H. 6. 10.
15. H. 7. 2.
2. E. 4. 2.
B. Main. 19.
30.

(*b*) Noy 100. Sect. 22. Also it hath been (*b*) resolved, that where *A*. was bound as a surety for *B*. and *B*. thereupon made a deed of gift of certain sheep to *A*. in order to save him harmless from the said bond, with an implied trust that the sheep should be returned to *B*. if *A*. should not be damnified, and afterwards an action was brought against *A*. for the taking of sheep, *B*. might justify the maintaining of him in respect of the said trust.

(*b*) Noy 100.
Moor 620.
See 39. H. 6.
19. 6. 20.
F. Main. 14.

(*c*) 34. H. 6. 30. Sect. 23. Also it seemeth to be (*c*) certain, that the assignee of a bond, or other *chose in action*, being made over to him for good consideration, in satisfaction of a precedent debt due *bono fide* to him, and not merely in consideration of the intended maintenance, may either maintain the oblige in an action brought by him for the debt, or commence an original action in his name, for he hath an equitable interest in the debt.

(*c*) 34. H. 6. 30.
15. H. 7.
Noy 52.
C. Eliz. 552.
2. Sid. 21.
B. Main. 9.

(*d*) 18. E. 2. 4. Sect. 24. Also it seemeth to be (*d*) agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, &c. by the same title, they may maintain one another in a suit relating to the same.

(*d*) 18. E. 2. 4.
B. Main. 41.
Hob. 92.
2 R. Abr. 118.
Noy 99.
Moor 562. 788. 1. Roll. 57.

(*e*) 34. H. 6. 26. Sect. 25. It is said, that he who is (*e*) bail for another, may take care to have his appearance recorded, but that he ought not to intermeddle any farther.

(*e*) 34. H. 6. 26.
14. H. 6. 6.
18. Ed. 4. 12.

As to the second of the said particulars, *viz.* How far some acts of this kind are justifiable in respect of kindred or affinity.

Sect. 26. It seems to be agreed, that whoever is in any way of kin or affinity to either of the parties, so long as the same (*f*) continues, or but related to him by being his (*g*) godfather, may lawfully (*h*) stand by him at the bar, and counsel and assist him, and also pray another to be of counsel to him; but that he cannot justify the laying out of any of his own (*i*) money in the cause, unless he be either (*k*) father, or son, or heir apparent to the party, or the husband of such an heiress.

(*f*) 20. H. 6.
6 Ed. 4. 5.
14. H. 7. 2.
(*g*) 6. Ed. 4. 5.
F. Main. 16.
(*h*) 21. H. 6.
15.
11. H. 6. 41. 42.
22. H. 6. 2.
19. Ed. 4. 32.

(*i*) 19. Ed. 4. 5. 2. Inf. 564.
(*k*) 21. H. 6. 15. 2. Inf. 564. Vide sup. f. 14.

As to the third of the said particulars, *viz.* How far some acts of maintenance are justifiable in respect of other relations,

I shall consider,

1. How far a lord may maintain his tenant.
2. How far a tenant may maintain his lord.
3. How far a master may maintain his servant.
4. How far a servant may maintain his master.
5. How far one neighbour may maintain another.

As to the first point, *viz.* How far a landlord may maintain his tenant.

SECT. 27. It seems certain, that not only the (a) lord, (a) 11. H. 6. but also the *custos que use* of a seignory, may come with the 39. b. 40. tenant to a trial in an assize against him, and stand by him 2. R. Ab. 117. and assist him, and also pray the sheriff to return an indif- 18. Main. 50. ferent jury.

SECT. 28. Also it seemeth, that the (b) lord of a town, (b) 18. Ed. 4. 2. in an action brought against the inhabitants, wherein a right 18. Main. 50. to a common burying-place, claimed by them, is brought into question, may maintain them in the defence of their right by shewing authentick evidence thereof to the jury.

SECT. 29. And in some (c) Books it is said, generally, that (c) 9. H. 6. 64. the lord may maintain his tenant, without saying how far he 18. Main. 3. may do it; and I do not find it any where expressly holden, that the lord may justify laying out his own money in defence of his tenant's title: but it seemeth the better opinion, that he may as well justify it as any other of the above-mentioned acts of (d) maintenance; for the lord, by ac- (d) Co. Lit. 65. cepting a man for his tenant, seemeth to take him under his immediate (e) protection; and inasmuch as the lands were (e) Co. Lit. originally derived from the lord, and he hath the continual 101. 384. benefit of the services due from them, the law in many cases 11. H. 6. 42. of (f) common right, obliges him to warrant them unto 2. R. Ab. 117. his tenant, and where it doth not oblige him, surely it will (f) F. Main. at least permit him to do it: but it seems clear, that he can- 25. not maintain him in respect of any lands not holden of him.

As

As to the second point, *viz.* How far a tenant may maintain his lord.

(a) 11. H. 6. 42. *Sect. 30.* It is said, that he may justify (a) coming with his lord, and standing with him at a trial; but I cannot find any thing more relating to this matter in any of the Books.

As to THE THIRD POINT, *viz.* How far a master may maintain his servant.

Sect. 31. It is said, that the master may go along with his (b) servant, or with his (c) chaplain, being retained to live in his house with him, in order to (d) retain counsel, and that he may pray one to be of counsel for him, and also that he may go with him to the (e) trial, and stand with him and aid him while the cause is tried, but ought not to speak in the court in favour of his cause.

(b) Hct. 79.
(c) 19. II. 6.
(d) 28. H. 6.
7. 12. b. 13.
34. H. 6. 25.
26.
B. Main. 6. 14.
F. Main. 20. Con. F. Main. 13. (e) 19. H. 6. 30. 11. H. 6. 42. 2. R. Abr. 116. Hct. 79.

Sect. 32. Also it is said, that if my servant be arrested in an action of (f) debt, I may assist him with money in order to keep him out of prison, that I may have the benefit of his service.

(f) 21. H. 7. 40.
Moor 814.
B. Main. 24.
31. H. 6. 9. 19. Ed. 4. 3. 2. R. Abr. 116. Hct. 79. B. Main. 44. 52.

Sect. 33. But it is said, that the master, in real actions, cannot justify laying out money for his servant, unless he hath some of his wages in his hand; which, if the servant be willing, the master may safely lay out on his behalf.

As to THE FOURTH POINT, *viz.* How far a servant may maintain his master.

(g) 39. H. 6. *Sect. 34.* It seemeth clear, that a person generally retained by another as his servant to do all manner of services, and not for a (g) particular occasion only, may justify (h) riding about to speed his business, and going to (i) counsel in his behalf, and shewing his evidences to the counsel or to the jury, and (k) standing by him at a trial between him and another; but it is certain that he cannot lawfully lay out any of his own (l) money to assist the master in his suit.

(g) 39. H. 6.
5. 6.
C. n. Keil. 50.
(h) 19. E. 4. 3.
(i) 19. H. 6.
31.
(k) 11. H. 6.
42.
(l) 3. H. 6. 57.
54.
11. H. 6. 10. 11.

As to THE FIFTH POINT, *viz.* How far one neighbour may assist another.

29. E. 4. 3.
12. Ed. 4. 14.

Sect. 35. It seems clear, that a man may lawfully go with his (m) neighbour to enquire for a person learned in law, but that he ought not to give him any money towards carrying on his suit.

(m) 19. F. 4. 3.
2. R. Ab. 118.

As to the fourth instance, wherein some acts of this kind are justifiable, *viz.* That relating to charity.

Sec. 26. It seems to be (a) agreed, that any one may lawfully give money to a poor man to enable him to carry on his suit. (a) 21. H. 6. 16.
9. H. 6. 64.
21. H. 6. 64.
22. H. 6. 55.
B. Main. 14.

Sec. 27. Also it hath been adjudged, that any one may safely go with a (b) foreigner who cannot speak *English* to a counsellor, and inform him of his case. (b) 19. E. 4. 1.
34. H. 6. 25.
15. H. 7. 2.
B. Main. 7.

As to the fifth instance, wherein some acts of this kind may be justified, *viz.* That relating to the profession of the law.

I shall consider,

1. How far they are justifiable in a counsellor.
2. How far in an attorney.

As to THE FIRST POINT, *viz.* How far acts of maintenance are justifiable in a counsellor.

Sec. 28. There is no doubt but that a (c) counsellor, having received his fee, may lawfully set forth his client's cause to the best advantage; but it is certain, that he can no more justify (d) giving him money to maintain his suit, or threatening a juror, than any other person. (c) 1. H. 6. 10.
11.
2. R. Abr. 116
2. Inst. 564.
(d) F. Main. 8
22. H. 6. 6.

As to THE SECOND POINT, *viz.* How far acts of maintenance are justifiable in an attorney.

Sec. 29. There is no doubt but that an attorney may (e) lawfully prosecute or defend an action in the court wherein he is an allowed attorney, in the behalf of any one by whom he shall be specially retained, and that he may assist his client, by laying out his own money for him to be repaid again, and also may maintain an action against him for the same by virtue of such a *retainer*, without any special promise. (e) 13. H. 4. 16.
Keilw. 50.
Hob. 117.
2. Inst. 564.
2. R. Abr. 116.
F. Main. 21.

Sec. 30. And it is said also, that attorneys may justify such maintenance in other courts wherein they are not (f) allowed attorneys, but that they cannot have an action for the money so laid out without a special promise, and that they are more justified by a general (g) retainer to prosecute for another all his causes, than if they were not retained at all; and it is (f) 3. Mod. 94.
Vide 2. Danv.
487. 12, 13, 14
Winch. 52.
1. Jon. 208.
C. Car. 159.
194.

Con. C. Eliz. 415. 459. 760. Moor 366. 2. R. Abr. 114, 115. (g) 2. R. Abr. 114.
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certain that they ought not to carry on a cause for another at their own expence, with a promise never to expect a repayment. And it seems justly questionable, whether solicitors who are no attorneys can in any case justify the laying out their money in another's suit.

R. Abr. 115.
Winch. 53.
Inst. 214.

Sect. 31. However, it is certain that no counsellor or attorney can justify the using any deceitful practice in maintenance of a client's cause, and that they are liable to be severely punished for all misdemeanors of this kind, not only by the common law, but also by statute; for it is enacted by Westminster 1. c. 29 "That if any serjeant, pleader, or other, do any manner of disceit or collusion in the king's court, or consent unto it, in disceit of the Court, or to beguile the Court or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man. And if he be no pleader, he shall be imprisoned in like manner by the space of a year and a day at the least. And if the trespass require greater punishment, it shall be at the king's pleasure."

In the construction of this statute the following points have been holden.

1. E. 4. 1.
B. Disc. 28.

Sect. 32. FIRST, That counsellors, &c. who are not sworn, are as much within the meaning of it as serjeants, &c. who are sworn.

2. Inst. 215.
Dyer 249.

Sect. 33. SECONDLY, That all fraud and falshood, tending to impose upon or abuse the justice of the king's courts, are within the purview of it, as in the following instances:

3. Inst. 215.
F. N. B. 98.

Sect. 34. I. Where an attorney sues out an *habere facias seisinam*, falsely reciting a recovery in a real action, where in truth there was no recovery at all, and by colour thereof puts the supposed tenant in the action out of his freehold.

4. Inst. 215.

Sect. 35. II. Where one brings a *procipe* against a poor man, knowing that he had nothing in the land, on purpose to get the possession from the true tenant.

5. E. 3. 1.
8. Inst. 215.

Sect. 36. III. Where one procures an attorney to appear for a man, and confers judgment without any warrant.

Dyer 362.
30. E. 4. 9.

Sect. 37. IV. Where one pleads a false plea, known to be utterly groundless, and invented merely with a design to delay justice, and abuse the Court; and therefore it is said, that if a client desire his attorney to plead such a plea, the attorney

attorney ought to enter upon the roll, "*non sum veraciter informatus, ideo nihil dicit.*"

As to THE THIRD GENERAL POINT, viz. How far offences of this kind are restrained by the common law.

Sect. 38. It seemeth, that all maintenance is strictly prohibited by the common law, as having a manifest tendency to oppression, by encouraging and assisting persons to persist in suits, which perhaps they would not venture to go on in upon their own bottoms; and therefore it is said, that all offenders of this kind are not only liable to an (a) action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff, but also that they may be (b) indicted as offenders against public justice, and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also it seemeth, that a court of record may commit a man for an act of maintenance done in the face of the Court.

(a) 11. H. 6. 11.
2. Inst. 208.
2. R. Abr. 124.
8. H. 5. 8.
(b) 2. R. Abr.
114.
2. Inst. 208.
(c) Ret. 79.

As to THE FOURTH GENERAL POINT, viz. How far offences of this kind are punished by the statute.

Sect. 39. It is enacted by 1. Edw. 3. c. 14. which was farther enforced by 20. Edw. c. 4. "That none of the king's ministers, nor no great man of the realm, by himself nor by other, by sending of letters, nor otherwise, nor none other great nor small, shall take upon them to maintain quarrels nor parts in the country, to the less and disturbance of the common law."

Sect. 40. And it is farther enacted by 1. Rich. 2. c. 4. "That none of the king's counsellors, officers, or servants, nor any other person within the realm of England, of whatsoever estate or condition they be, shall take or sustain any quarrel by maintenance, in the country or elsewhere, upon grievous pain, that is to say, the said counsellors and the king's great officers upon a pain which shall be ordained by the king himself, by the advice of the lords of his realm; and other less officers and servants of the king's as well in the exchequer, and all his other courts and places, as of his own meiny, upon pain to lose their offices and services, and to be imprisoned, and then to be ransomed at the king's will, every of them according to their degree, estate, and desert; and all other persons through the realm upon pain of imprisonment, and to be ransomed as aforesaid."

In the construction of these statutes the following points have been holden.

F. Main. 14. *Sect. 41.* FIRST, That maintenance of a suit in a court baron is as much within the purview thereof as maintenance in a court of record.

3. H. 6. 53. 54. *Sect. 42.* SECONDLY, That *nul tiel record* is a good plea to an action of maintenance brought on these statutes; and therefore, that he who barely assists another in taking out an original which never is returned, is not liable to any such action.

Fitz. Maintenance 17. 26. *Sect. 43.* THIRDLY, That it is not material, whether the plaintiff in an action on the said statutes were nonsuited, or recovered in the action wherein the maintenance is supposed.

Reg. 182. b. *Sect. 44.* Also it is certain, that he who fears that another will maintain his adversary, may, by way of prevention, have an original writ grounded on the said statute, prohibiting him so to do.

12. Mod. 322. *Sect. 45.* Also all persons are prohibited to give or receive any liveries or badges for maintenance, under severe penalties, by 1. Rich. 2. c. 7. 7. Hen. 4. c. 14. 13. Hen. 4. c. 3. 8. Hen. 6. c. 4. and 8. Edw. 4. c. 2.

+ *Sect. 46.* And it is further enacted by 32. Hen. 8. c. 9.
 " That no person whatsoever shall unlawfully maintain, or
 " cause or procure any unlawful maintenance in any action,
 " demand, suit, or complaint, in any of the king's courts of
 " the chancery, *Whitehall*, or elsewhere, where any person
 " shall have authority by virtue of the king's commission,
 " patent, or writ, to hold pleas of lands, or to examine, hear,
 " or determine, any title of lands, or any matter of witnesses,
 " concerning the title, right, or interest of any lands, tene-
 " ments, or hereditaments; and also that no person whatso-
 " ever do unlawfully retain, for maintenance of any suit or
 " plea, any person or persons, or embrace any freeholders
 " or jurors, or suborn any witness by letters, rewards,
 " promises, or any other sinister labour or means, for to
 " maintain any matter or cause, or to the disturbance or
 " hindrance of justice, or to the procurement, by occasion
 " of any manner of perjury, by false verdict or otherwise,
 " in any manner of courts aforesaid, upon pain to forfeit
 " for every such offence ten pounds; the one moiety
 " thereof unto the king, and the other moiety to him that
 " will sue for the same by action of debt, &c."

Sect.

Sect. 47. It seemeth, that in an information on this Stat. 42, 43. statute it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully.

Sect. 48. Also it is said to have been adjudged, that *Noy 48.* maintenance of a suit in a spiritual court is neither within *C. Eliz. 5944* this nor any of the other above-mentioned statutes concerning maintenance.

Sect. 49. Also it hath been holden, that in an information *Savil 42, 43.* on this statute, it is necessary to shew that a plea was depending, and therefore that it is not sufficient to say that a bill was exhibited.

CHAPTER THE EIGHTY-FOURTH.

OF CHAMPERTY.

AND now we are come to the second species of maintenance, called CHAMPERTY, which is the unlawful maintenance of a suit in consideration of some bargain to have part of the thing in dispute, or some profit out of it. 2. Inst. 208.
Co. Lit. 362.

SECT. 1. Having shewn in the precedent chapter what shall amount to an act of maintenance, and how far all maintenance in general, and consequently champerty, is punishable by the common law, I shall only take notice in this place, how far this offence in particular is restrained by statute, and to that end shall set down in order the several statutes relating to it, and shew in what manner they have been expounded.

SECT. 2. And FIRST, it is enacted by the statute of Westminster 1. c. 25. "That no officers of the king by themselves nor by other, shall maintain pleas, suits, or matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof by covenant made between them; and he that doth, shall be punished at the king's pleasure."

In the construction of the statute these following opinions have been holden.

SECT. 3. FIRST, That by the king's courts, therein mentioned, are intended only his courts of record. 2. Inst. 208.

SECT. 4. SECONDLY, That under the word "*covenant*," which in a strict sense signifieth only an agreement by deed, F. N. B. 172.
2. Inst. 209. all kinds of *promises* and *contracts* of this kind are included, 563. whether they be made by *writing* or by *parol*.

SECT. 5. THIRDLY, That maintenance in personal actions to have part of the debt or damages, is as much within the statute, as maintenance in real actions for a part of the land. 47. Affire 5.
47. Ed. 2. 9.

N. B. 171.
 Inst. 209.
 Ed. 3. 9.
 Aff. 3.
 H. 7. 18.
 Champ. 4.
 Champ. 2.

Sect. 6. FOURTHLY, That maintenance in consideration of a rent granted out of land in variance is within this statute, but that rent granted out of other lands is no way within the purview of it.

Sect. 7. FIFTHLY, That it hath been holden not to be material, whether he who brings a writ of champerty did in truth suffer any damage by it, or whether the plea wherein it is alledged be determined or not.

(a) 1. E. 3. 52.
 30. Ed. 3. 3. 4.
 1. R. Abr. 113.
 32.

Sect. 8. SIXTHLY, That the (a) maintenance of the tenant or defendant is as much within the meaning of the statute, as the maintenance of a demandant or plaintiff.

(b) 1. H. 7. 2.
 Champ. 6.

Sect. 9. SEVENTHLY, That (b) such grants only of part of the thing in suit, which are made merely in consideration of the maintenance are within the meaning of the statute, and not such as are made in consideration of a precedent honest debt, which is agreed to be satisfied with the thing in demand when recovered.

Sect. 10. And it is further enacted by the statute of Westminster 2. c. 49. "That the chancellor, treasurer, justices, nor any of the king's counsel, no clerk of the chancery, nor of the exchequer, nor any justice or other officer, nor any of the king's house, clerk nor lay, shall not receive any church, nor advowson of a church, land, nor tenement in fee, by gift or by purchase, or to farm, nor by champerty, nor otherwise, so long as the thing is in plea before the king, or before any of his officers, nor shall take no reward thereof. And that he that doth contrary to this act, either himself, or by another, or make any bargain, shall be punished at the king's pleasure, as well he that purchaseth as he that doth sell."

In the construction of this statute the following opinions have been holden.

1. Inst. 484.
 483.

Sect. 11. FIRST, That it extendeth only to the officers therein named, and not to any other persons.

(a) 1. Inst. 485.
 2. Inst. 484.
 3. Aff. 3.
 4. Champ. 8.
 5. Champ. 6.
 6. 22. E. 3.
 7. b. 52.
 8. Inst. 484.
 9. N. B. 171.
 10. E.

Sect. 12. SECONDLY, That it so strictly restrains all such officers from purchasing any land, hanging a plea, that they cannot be excused by a consideration of (a) kindred or affinity, and that they are within the meaning of the statute, by barely making such a purchase; whether (b) they maintain the party in his suit, or not; (c) whereas such a purchase, for good consideration made by any other person, of any

CH. 24. OF CHAMPERTY.

any terre-tenant, is no offence, unless it appear that he did it to maintain the party.

Sect. 13. And it is further enacted by 28. Edw. c. 11. in the following words: "Because the king hath heretofore ordained by statute, that none of his ministers shall take no plea for maintenance, by which statute other officers were not bounden before this time, the king wills that no officer, nor any other (for to have part of the thing in plea), shall not take upon him the business that is in suit; nor none upon any such covenant shall give up his right to another; and if any do and be attainted thereof, the taker shall forfeit unto the king so much of his land and goods as doth amount to the value of the part that he hath purchased for such maintenance. And to obtain this, whosoever will, shall be received to sue for the king before the justices before whom the plea hangeth, and the judgment shall be given by them. But it may not be understood hereby, that any person shall be prohibited to have counsel of pleaders, or of learned men in law, for his fee, or of his parents and next friends."

See also 33. Ed.
1. st. 3.
1. Rich. 2. c. 1.
1. Inst. 369.

In the construction of this statute the following points have been holden.

Sect. 14. FIRST, That a (a) conveyance executed, hanging a plea in pursuance of a bargain made before, is not within the meaning of it.

(a) 30. Aff. 15.
8. Ed. 4. 13.
2. Inst. 563.
F. Champ. 13.
F. N. B. 172.

• *Sect. 15.* SECONDLY, That champerty in any action at (b) common law, whether it be real, personal, or mixt, is within this statute: also it seems the better opinion, that the purchase of land while a suit of (c) equity concerning it is depending, is within the purview of it.

(b) 47. Ed. 39.
47. Affize 5.
2. Inst. 563.
(c) Moor 653.
Con. 2. R. Abr.
113.

Sect. 16. THIRDLY, That a (d) lease for life, or years, or a voluntary gift of land, hanging a plea, is as much within the statute as a purchase for money.

(d) 8. E. 4. 15.
B. Champ. 10.
F. N. B. 172.

Sect. 17. FOURTHLY, That a surrender made by a (e) lessee to his lessor is not within the meaning of this statute; for since the lessor may lawfully maintain his lessee without such a surrender, as hath been more fully shewn in the precedent chapter, surely *à fortiori* he may do it after the surrender.

(e) F. N. B.
172.
2. Inst. 564.

Sect. 18. FIFTHLY, That no (f) conveyance, or promise thereof, relating to lands in suit, made by a father to his son, or by any ancestor to his heir apparent, is within the statute,

(f) 2. Inst. 564.
F. N. B. 172.

statute, since it only gives them the greater encouragement to do what by nature they are bound to do.

(a) 13. H. 7. 17. *Sect. 19.* That the *(a)* giving of part of the land in suit, *B. Champ. 3.* after the end of it, to a counsellor for his wages, is not within the meaning of it, if it evidently appears that there was no kind of precedent bargain relating to such gift; but *(b)* 2. Inst. 564. it seems *(b)* dangerous to meddle with any such gift, since it cannot but carry with it a strong presumption of champerty.

Vide 2. b. p. 382. † *Sect. 20.* And it is enacted by 31. Eliz. c. 5. "That the offence of champerty may be laid in any county, at the pleasure of the informer."

CHAPTER THE EIGHTY-FIFTH.

OF EMBRACERY.

FOR the better understanding of the nature of EMBRACERY, I shall consider,

1. What kind of maintenance comes under the notion of embracery.
2. What acts of this nature are altogether unlawful.
3. In what circumstances some kinds of them may be lawful.
4. How far this offence is restrained by the common law.
5. How far by statute.

AS TO THE FIRST POINT, *viz.* What kind of maintenance comes under the notion of embracery.

Sect. 1. It seems clear, that (*a*) any attempt whatsoever to corrupt or influence, or instruct a jury, or any way to incline them to be more favourable to the one side than to the other by money, promises, letters, threats, or persuasions, except only by the strength of the evidence and the arguments of the counsel in open court, at the trial of the cause, is a proper act of embracery, (*b*) whether the jurors on whom such attempt is made give any verdict or not, or whether the verdict given be true or false.

(*a*) F. N. B. Co. Lit. 369. Moor 815.
4. Comm. 140.
(*b*) 21. H. 6. 29.
22. H. 6. 5.
37. H. 6. 31.
B. Dec. Tant.
10, 11. 13.
Co. Lit. 369.
Moor 815.

Sect. 2. (*c*) And the law so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with, and therefore it will not suffer a mere stranger, so much as to labour a juror to appear and act according to his conscience.

(*c*) 13. H. 4. 26.
Moor 806.
C. Eliz. 816.
Co. Lit. 159
369.

Sect. 3. Also it is said, that generally the giving of money to a juror (*d*) after the verdict, without any precedent contract in relation to it, is an offence favouring of the

(*d*) 39. Aff. 19
B. Dec. Tan.
the 14.

the nature of embracery; because, if such practices were allowable, it would be easy to evade the law, by giving jurors secret intimations of such an intended reward for their service, which might be of as bad consequence as the giving of money before-hand. But it seems clear, that the giving of jurors such a reasonable recompence as is usually allowed them for their expences in travelling, &c. and which may fairly be expected by them from either side that shall prevail, is no way criminal, because if no such allowance were to be expected, it would be often difficult to prevail with persons to serve on a jury at their own charge; and therefore by experience it hath been found necessary to permit the parties to give jurors some amends for their charges.

- Sect. 4.* It hath been adjudged, that the bare (a) giving of money to another to be distributed among jurors, is an offence of the nature of embracery, whether any of it be afterwards actually so distributed or not: also it is (b) clear, that it is as criminal in a juror as in any other person to endeavour to prevail with his companions to give a verdict for one side by any practices whatsoever, except only by arguments from the evidence which was produced, and exhortations from the general obligations of conscience to give a true verdict. And there can be no doubt but that all fraudulent contrivances whatsoever to secure a verdict are high offences of this nature; as where persons by (c) indirect means procure themselves or others to be sworn on a *sales* in order to serve one side.
- (a) 22. H. 6. 5.
28. H. 6. 7. 12.
31. H. 6. 8. 9.
B. Main. 6. 14.
(b) 17. Ed. 4. 5.
28. Ed. 4. 4.
B. Main. 32.
39.
(c) 1. Saund.
302.

As to THE SECOND POINT, *viz.* What acts of this kind are altogether unlawful.

- Sect. 5.* It seems clear, that neither the party himself, nor his counsel, nor attorney, nor any person whatsoever, can justify any indirect practices of influencing a jury, either by giving (d) or promising them money, or (e) menacing them, or (f) instructing them in the cause beforehand, &c.
- (d) 13. H. 4. 16.
17.
11. H. 6. 11.
2. R. Abr. 116.
6. 3.
(e) 19. H. 6.
31.
13. H. 4. 17.
(f) 2. Bull. 25. Noy 102. Co. Lit. 362. Moor 815.

As to THE THIRD POINT, *viz.* In what circumstances some acts of this nature may be lawful.

- Sect. 6.* It seemeth clear, that any person who may justify any other act of maintenance, may safely labour a juror to (g) appear and give a verdict according to his conscience, but that no other person can justify intermeddling so far,
- (g) Dyer 48.
Co. Lit. 157.
369.
Moore 813. Noy 102.

and

and that no one whatsoever can justify the labouring a juror (a) not to appear.

(a) Hob. 194.

AS TO THE FOURTH POINT, *viz.* How far offences of this kind are restrained by the common law.

Sect. 7. There can be no doubt but that they subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. Also it seemeth, that if an act of embracery were not known before the trial of a cause, so that the party to whose prejudice it was intended, had no opportunity to prevent the ill effects of it, by challenging the juror who was practised upon, it will be a good ground to move the Court to set aside the verdict.

AS TO THE FIFTH POINT, *viz.* How far offences of this kind are restrained by statute.

Sect. 8. It is enacted by 5. Edw. 3. c. 10. "That if any
" juror in assizes, juries, or inquests, take of the one party
" or of the other, and be thereof duly attainted, that hereafter
" he shall not be put in any assizes, juries, or inquests, and
" nevertheless he shall be commanded to prison and further
" ransomed at the king's will. And the justices before
" whom such assizes, juries, and inquests shall pass, shall
" have power to enquire and determine according to this
" statute."

Sect. 9. And it is further enacted by 34. Edw. 3. c. 8.
" That in every plea whereof the inquest or assize doth pass,
" if any of the parties will sue against any of the jurors, that
" they have taken of his adversary or of him for to give
" their verdict, he shall be heard, and shall have his plaint
" by bill presently before the justices before whom they did
" swear, and that the juror be put to answer without any
" delay; and if they plead to the country, the inquest shall
" be taken maintenance. And if any man other than the
" party will sue for the king against the juror, it shall be
" heard and determined as afore is said. And if the juror be
" attainted at the suit of other than the party, and make a
" fine, the party that sueth shall have half the fine; and
" that the parties to the plea shall recover their damages by
" the assize of the inquest. And that the juror so
" attainted have the prison of one year, which imprisonment the king granteth, that it shall not be pardoned for
" any fine; and if the party will sue by writ, before other
" justices, he shall have the suit in the form aforesaid."

Sect.

Sec. 10. And it is further enacted by 38. Edw. 3. c. 12.
 " That if any jurors in assizes sworn, and other inquests to
 " be taken between the king and party, or party and party,
 " do any thing take by them or other, of the party, plaintiff,
 " or defendant, to give their verdict, and thereof be attainted,
 " by process contained in the said statute of 34. Edw. 3. be
 " it at the suit of the party that will sue for himself, or for the
 " king, or any other person, every of the said jurors shall pay
 " ten times as much as he hath taken. And that he that
 " will sue shall have the one half, and the king the other
 " half. And that all the embraceors to bring or procure
 " such inquest in the country to take gain or profit shall be
 " punished in the same manner and form as the jurors.
 " And if the juror or embraceor so attainted have not
 " whereof to make gree in the manner aforesaid, he shall
 " have the imprisonment of one year: and the intent of
 " the king, of great men, and of the commons is, that no
 " justice nor other minister shall enquire of office, upon
 " any of the points of this article, but only at the suit of
 " the party, or of other, as afore is said." See also the
 32. Hen. 8. c. 9. sec. 3. 6.

In the construction of these statutes the following points have been holden.

Sec. 11. FIRST, That all actions of *decies tantum* being founded on an offence supposed to have been committed in some former action appearing upon record, it will be a good plea in bar, either that there is no (a) such record at all, or that there is not any such (b) record by which it may appear that the juror was sworn; and that it is a good (c) exception in abatement of the writ, that there is a variance in the first record from that in the declaration in the present action; yet it is said, that it is not necessary to (d) shew the whole record in certain, but only so much of it as conveys the plaintiff to his action.

(a) 5. Ed. 4. 3.
 B. Dec. Tant.
 2. 11.
 (b) 17. H. 6. 31.
 B. Dec. Tant.
 11.
 (c) 9. H. 6. 1.
 B. Dec. Tant.
 1.
 (d) 34 H. 6. 4.

Sec. 12. SECONDLY, That it is not (e) sufficient to shew that the defendants took money in order to embrace a jury, without shewing also that they actually disposed of it accordingly.

(e) 17. H. 6. 31.
 P. N. B. 171.

Sec. 13. THIRDLY, That the (f) plaintiff must shew in certain how much was received, or otherwise the Court will not know for what sum to give judgment.

(f) Pl. Com.
 85.

Sec. 14. FOURTHLY, That the giving of money to a juror (g) after the verdict is not within the statute, unless there were some precedent contract relating to it.

(g) 6. Aff. 19.
 B. Dec. Tant.

Sect. 15. FIFTHLY, That it is not (*a*) material whether (*a*)^{11. H. 6. 32.} the jurors gave any verdict or not, or if they did give one,^{17. H. 6. 31.} whether it were true or false. ^{B. Dec. Tant.}

^{13. F. N. B. 171. Co. Lit. 369. Dyer 95.}

Sect. 16. SIXTHLY, That all the jurors and embracers^{40. Ed. 3. 3.} may be joined in one action, notwithstanding they severally^{36. H. 6. 28.} received different sums, because all was received in order to^{B. Dec. Tant.} give the same verdict, which could not but be the entire act^{3. 4.} of all the jurors. But it seems, that each defendant ought^{F. N. B. 171.} to plead severally that he did not take money in the manner^{Finch 255.} as the plaintiff hath declared. ^{21. H. 6. 20.}

Sect. 17. SEVENTHLY, That the (*b*) defendants ought (*b*)^{B. Dec.} not to plead generally not guilty, but that they ought spe-^{Tant. 1.} cially to deny the taking of the money, &c. ^{18. Savil. 42.}

Sect. 18. EIGHTHLY, That the plaintiff (*c*) shall be paid (*c*)^{41. E. 3. 15.} the moiety of the money due to him on a judgment in^{44. E. 3. 36.} *decies tantum* before the king, because the king's moiety is^{B. Dec. Tant.} not due as a debt, but as a fine; and wherever the king is^{5. 7.} intitled to a fine from the suit of a subject, the plaintiff shall first be satisfied.

Sect. 19. NINTHLY, That the husband (*d*) alone may (*d*)^{7. H. 4. 2. 3.} bring a *decies tantum*, for an embracery in a former action^{43. E. 3. 16.} brought by him and his wife, because^{B. Dec. Tant.} by a *decies tantum*^{9. 19.} money only is to be recovered wherein the wife can claim no share.

Sect. 20. TENTHLY, That he who buys land to main-^{tain a suit at a lower price than it is known to be worth, is} (*e*)^{42. Ed. 3. 9.} as much within the statute, for so much as the (*e*) land is^{B. Dec. Tant.} worth more than he gave, as if he had received it in money. ^{4. 1. R. Abr. 579.}

Sect. 21. ELEVENTHLY, That this being a popular action^{may be barred by the} (*f*) king's release, being made before (*f*)^{5. E. 4. 2.} any action brought, but that it cannot be barred by the^{3. b. 2. c. 26.} release of the party grieved; and from the same ground also^{64.} it follows, that the party grieved needs not in such action^{B. Dec. Tant.} declare of any damages done to him by the embracery; but^{15.} if he do, it is said that he (*g*) ought to lay them severally^{C. Eliz. 138.} against each defendant, or else that his writ shall abate,^{583.} unless he will release them: but perhaps there may be good^{11. Co. 65.} reason to question this opinion; for why may not the^{3. Inst. 194.} damages be as well recovered, as the action jointly laid^{(g) 44. E. 3.} against all the defendants? ^{36. B. Dec. Tant.}

- (a) 44. E. 3. 12. *Sect. 22.* TWELFTHLY, That no (a) process of out-
 47. E. 3. 4. lawry lies in this action, but only a *capias* or distress infinite,
 B. Dec. 6. 8. upon a *nihil* returned, and that such distress ought to be of
 the lands which the defendants had at the time of the writ
 of *decies tantum* purchased, and not of those which they had
 (b) 47. E. 3. 4. at the time of the inquest; and that no *capias* (b) into a
 foreign county lies against the jurors, because it shall be
 presumed that they are in the county wherein they were
 returned on the jury; but clearly this reason can no way be
 extended to the embracers: and perhaps it may be over-
 favourable to carry it so far in relation to the jurors, especi-
 ally since the distress infinite can only affect the lands which
 they had at the time of the *decies tantum*, before which they
 may possibly have sold those which they had at the return of
 the *venire*; and why should not the sheriff's present return
 that the defendants have nothing in the county, overbalance
 the presumption chiefly grounded on the former return,
 with which the present is not inconsistent, being made at a
 subsequent time?

Wid. 6. E. 4.
 12. 2.
 3. R. Abr. 277.

CHAPTER THE EIGHTY-SIXTH.

OF THE OFFENCE OF BUYING OR SELLING A
PRETENDED TITLE.

FOR the better understanding the offence of buying or selling a pretended title, I shall consider :

1. How it is restrained by common law.
2. How by statute.

As to THE FIRST POINT, *viz.* How it is restrained by common law.

Sect. 1. It seemeth to be a high offence at common law, to buy or sell any doubtful title to lands known to be disputed, to the intent that the buyer may carry on the suit, which the seller doth not think it worth his while to do, and on that consideration sells his pretensions at an under-rate. And it seemeth not to be material whether the title so sold be a good or bad one, or whether the seller were in possession or not, unless his possession were lawful and uncontested. For all practices of this kind are by all means to be discountenanced, as manifestly tending to oppression, by giving opportunities to great men to purchase the disputed titles of others, to the great grievance of the adverse parties, who may often be unable or discouraged to defend their titles against such powerful persons, which perhaps they might safely enough maintain against their proper adversary.

As to THE SECOND POINT, *viz.* How far offences of this kind are restrained by statute.

Sect. 2. It is recited by 1. Rich. 2. c. 9. "That many persons having true title to lands, and also in personal actions were wrongfully delayed of their rights and actions, by means that the defendants did commonly make gifts and feoffments of their lands in debate, and of their goods, to lords, and other great men, against whom the said pursuants, for menace that was made to them, neither could nor durst make their pursuits; and also that many persons oftentimes used to disseise others, and anon after such disseisin to make divers feoffments, sometimes to lords and other

other great men to have maintenance, and sometimes to persons unknown, to the intent to delay the said dissees, &c." and it is thereupon enacted, "That from thenceforth no gift, or feoffment, of lands, tenements, or goods, be made, by such fraud or maintenance; and that if any be in such wise made, they shall be holden for none and of no value; and that the said dissees shall from thenceforth have their recovery against the first disseisor; as well of the lands and tenements as of their double damages, without having regard to such alienations, so that the dissees commence their suits within the year next after the disseisin done."

B. Feoffments *act. 3.* In the construction of the statute it hath been *act. 10.* holden, that feoffments of this kind are only void in respect *Co. Lit. 369.* of the dissees, but that they are effectual between the feoffor and feoffee, &c.

† And it is enacted by stat. 13. Ed. 1. c. 49. "That no person of the king's house shall buy any title whilst the thing is in dispute, on pain of both the buyer and seller being punished at the king's pleasure."

Ld. Ray. 537. *Stat. 4.* And it is further enacted by 32. Hen. 8. c. 9. "That no person or persons whatsoever shall bargain, buy, or sell, or by any ways or means obtain, get, or have any pretended rights or titles, or take, promise, grant, or covenant to have any right or title, of any person or persons, in, or to any manors, lands, tenements, or hereditaments, but if such person or persons which shall so bargain, sell, give, grant, covenant, or promise the same, their ancestors, or they by whom he or they claim the same, have been in possession of the same, or of the reversion or remainder thereof, or taken the rents or profits thereof, by the space of one whole year next before the said bargain, covenant, grant, or promise made; upon pain that he that shall make any such bargain, sale, promise, covenant, or grant, to forfeit the whole value of the lands, tenements, or hereditaments so bargained, sold, promised, covenanted, or granted, contrary to the form of this act. And the buyer or taker thereof, knowing the same, to forfeit also the value of the said lands, tenements, or hereditaments so by him bought, or taken, as is above said. The one half of the said forfeitures to be to the king, and the other half to the party that will sue for the same in any of the king's courts of record, by action of debt, bill, plaint, or information. In which action, bill, plaint, or information, no essoin, protection, wager of law, nor injunction shall be allowed."

Stat.

Seet. 5. But it is provided by the said statute, "That it shall be lawful to any person, being in lawful possession, by taking of the yearly farm, rents, or profits, of, or for any manors, lands, tenements, or hereditaments, to buy, obtain, get, or have by any reasonable way or means, the pretended right or title of any other person or persons, hereafter to be made to, of, or in such manors, lands, tenements, or hereditaments, whereof he or they shall so be in lawful possession, any thing in the said act contained to the contrary notwithstanding."

Seet. 6. And it is further provided, "That the said statute shall not extend to charge any person with any of the abovementioned penalties, except such person be sued for the offence within one year."

In the construction of this statute the following opinions have been holden :

Seet. 7. I. That it is not material whether any suit be *Plowd. 83.* pending concerning the lands contracted for, or not, whereas the statutes set forth in the precedent chapters extended only to contracts concerning lands which were actually in suit.

Seet. 8. II. That in an action on this statute, the plaintiff needs not recite it, because the judges are bound *ex officio* to take notice of it, being of a public nature ; but that if he do recite it, he must, at his peril, take care to recite it certainly, because it is the ground of his action ; and the Court will not aid him by intending that there is another statute to maintain his action, different from that whereon he himself hath founded it. *Lit. Rep. 369. B. 2. c. 25. f. 101. Plowd. 84. C. Car. 233. Dyer 74. Con. 1. And. 76.*

Seet. 9. III. That in such an action against the buyer of a pretended title it ought expressly to appear, that the defendant did know that the seller had not been in possession the year before ; and *vice versa*, that in such an action by the buyer the contrary ought to appear, for otherwise it may be intended, that he was *particeps criminis*, and therefore ought not to have any share of the penalty. *1. Leon. 167. 1. Burr. 300.*

Seet. 10. IV. That it is not sufficient to shew, that the seller had not been in possession, &c. a year before, without expressly averring that he had a pretended right or title, because that is the point of the action. *Lit. Rep. 369. Dyer 74. Plowd. 80. 88. C. Car. 233.*

Seet. 11. V. That it is not (a) sufficient to set forth the value of the land at the time of the conveyance executed, (a) *C. Car. 233.*

without shewing the value at the time of the bargain, because the forfeiture is governed by the latter.

Sec. 12. VI. That a contract for (a) customary right to a copyhold estate, or for a lease for (b) years, is as much within the statute as a contract for the fee simple; for the words of the statute are, "*any right or title*," and such contracts are as much within the mischief intended to be redressed by the statute as any others can be: but it is (c) said, that a lease for years made with an intent to try the title in ejectment, is not within the meaning of the statute, because it is in a kind of course of law, unless it be made to a powerful man to sway the cause.

Sec. 13. VII. That in an action for the making such a lease for years, it is not necessary precisely to set forth the commencement and end of it, because the plaintiff is supposed to be a stranger to it.

Sec. 14. VIII. That a lease for years by one out of possession being made off the land, is as much within the statute as if it had been made upon the land, though it be wholly void in law; for it is a lease in reputation, and taken for such among the vulgar, and tends as much to disquiet the possession as if it had been effectual in law.

Sec. 15. IX. That no conveyance made by one who hath the uncontested possession, and undisputed absolute propriety of lands, is any way within the meaning of the statute, because it no way favours of maintenance, and can be prejudicial to no one; from whence it follows, that a disseisor obtaining the release of the disseisor, or a mortgagor redeeming his land, are in no danger of the statute in respect of any contract by them made concerning such land, after such release or redemption.

Sec. 16. X. That one who gains the possession of lands by virtue of a judgment at law in affirmance of an ancient title, cannot come within the meaning of this statute in respect of any lease made of such lands; for it can never be imagined that it was the intent of the statute to oblige all persons who should recover their lands to occupy them themselves, which would be generally inconvenient, and often wholly impracticable; and therefore it must be admitted from the necessity of the case, that such persons may lawfully lease their lands and houses to proper tenants, to be manured and occupied for the usual rents: but if it shall appear that the title to such lands is still contested notwithstanding such recovery, and that such lease was in truth designed

designed for the maintenance of the title, I can see no reason why it should not be as much within the statute as any case whatsoever.

However there seems to be no doubt, but that if a disseisee enter upon a disseisor, being in possession of the land under a pretended title, and immediately sell it to a stranger, he is as much within the statute as if he had been out of possession at the time of such sale; for notwithstanding his entry was lawful, and he had both the absolute property and possession of the land, yet inasmuch as the disseisor claims a title to it which is yet in dispute, such a sale by the disseisee seems within the intent of the statute, which meant absolutely to restrain all persons from transferring their disputed titles to any stranger whatsoever.

1. Leon. 166.
167. But Co.
Lit. 369. seems
contrary.

But it is said, that such a sale by a father to his son and heir apparent, is excepted out of the general purview of the statute by common reason, which, by the ties of nature as well as of interest, obliges such a son to maintain his father; yet it hath been holden, that such a sale to a brother of the half blood is within the statute.

Savil 95, 96.
1. Leon. 167.
Modern 656.

Sec. 17. XI. It is said, that the abovementioned proviso, “that one who is in lawful possession by taking the yearly rents or profits of lands, &c. may lawfully buy the pretended right of any other person by reasonable means,” is no more than the law would have implied, if it had not been expressed; for such a contract cannot possibly be to the wrong of any one, and tends rather to quiet suits than to promote them.

1. Leon. 167.
Savil 94, 96.

And from the like reason also it is said, that a disseisor may lawfully get the release of the disseisee, though his possession was unlawful; and it seems clear, that such a release cannot come within the meaning of the statute, if the disseisee had the true right, and no other had any pretence of title to the land; for in such case it is clear, that the end of the release is not for maintenance, but for the settlement of all disputes: but if such a disseisee had had but a contested title, and such release were intended only to enable the disseisor to defend himself with the dubious title of his disseisee, surely it cannot but be as much within the meaning of the statute, as any conveyance to one wholly out of possession.

Co. Lit. 369.

However it seems clear, that those instances in the said proviso, by which it is shewn how it shall appear that the persons who are permitted to contract for pretended titles

Co. Lit. 369. b.

are in possession, as by the receiving of rent, &c. are only put for examples, and that those who are any way whatsoever lawfully seised in possession, reversion, or remainder, are within the benefit of the proviso; but it seems clear, that they can only justify the taking such a conveyance as will strengthen the estate whereof they are seised, and that they cannot take a covenant from a stranger to convey the land to them, when he shall have recovered it on a pretended right, because such a covenant seems clearly to favour as much of maintenance, as if they had been strangers to the land.

Sect. 18. And it is enacted by the 31. Eliz. c. 5. s. 4.
 “ That the offence of buying titles may be laid in any county, at the pleasure of the informer.”

CHAPTER THE EIGHTY-SEVENTH.

OF SEDUCING ARTIFICERS.

Sect. 1. BY 5 Geo. 1. c. 27. s. 1. it is recited, that
 “ Whereas divers ill-disposed persons, as well
 “ foreigners as subjects of this kingdom by confederacy
 “ with foreigners, have of late drawn away and transported,
 “ and have also made divers attempts to entice, draw away,
 “ and transport, several artificers and manufacturers of and
 “ in wool, iron, steel, brass and other metals, clockmakers,
 “ watchmakers, and divers other manufacturers of *Great*
 “ *Britain*, out of his Majesty’s dominions into foreign
 “ countries, by entering into contracts with them to give
 “ them greater wages and advantages than they have or can
 “ reasonably expect within this kingdom, and by making
 “ them large promises, and using other arts to inveigle and
 “ draw them away: and whereas there is great danger, that
 “ by means of these and such like practices many great and
 “ profitable branches of the trades and manufactures of
 “ this kingdom may be transplanted into foreign countries:
 “ therefore for the preventing the like practices for the fu-
 “ ture, be it enacted, that if at any time hereafter any per-
 “ son or persons shall contract with, entice, endeavour to
 “ persuade or solicit, any manufacturer or artificer of or in
 “ wool, iron, steel, brass, or any other metal, clockmaker,
 “ watchmaker, or any other artificer or manufacturer of
 “ *Great Britain*, to go out of this kingdom into any foreign
 “ country out of his Majesty’s dominions, and shall be
 “ lawfully convicted thereof upon any indictment or in-
 “ formation which shall be preferred or brought against
 “ him or them in any of his Majesty’s courts at *Westminster*,
 “ or at the assizes or general gaol-delivery or quarter-ses-
 “ sions of the peace for the county, riding, or division,
 “ where such offence shall be committed, the person and
 “ persons so convicted shall be fined any sum not exceeding
 “ one hundred pounds for such first offence, according to
 “ the discretion of the court in which such conviction shall
 “ be, and shall be imprisoned for the space of three months,
 “ and until such fine shall be paid: and if any person
 “ or persons, having been once convicted as aforesaid, shall

Persons con-
 victed of con-
 tracting with
 or enticing,
 &c. any arti-
 fier to go
 into a foreign
 country, shall
 be fined not
 exceeding
 100*l.* for the
 first offence,
 and be impris-
 oned for
 three months;

And for the second offence shall be fined discretionally, and imprisoned for twelve months.

“ offend again, and be so convicted a second time of the like offence, then and in such case the person so convicted a second time shall be fined at the discretion of the court where such conviction shall be, and be imprisoned for twelve months, and until such fine shall be paid.”

Prosecution in twelve months after the offence.

Seet. 2. By 5. Geo. 1. c. 27. f. 2. it is “ provided nevertheless, that no person or persons shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be begun within the space of twelve months next after such offence shall be committed.”

After May 1 1719, any artificer going into a foreign country, there to exercise his trade, and not returning in six months after warning given him by the ambassador, &c. shall be incapable of taking any legacy, &c.

Seet. 3. By 5. Geo. 1. c. 27. f. 3. it is further enacted, “ That if any of his Majesty’s subjects within this kingdom, being such artificer or manufacturer as aforesaid, shall, at any time after the first day of *May* 1719, go into any country out of his Majesty’s dominions, there to use or exercise, or to teach, any of the said trades or manufactures to foreigners, or in case any of his Majesty’s subjects now being, or who hereafter shall be, in any such foreign country out of his Majesty’s dominions as aforesaid, and there using or exercising any of the said trades or manufactures herein before mentioned, shall not return into this realm within six months next after warning shall be given to him by the ambassador, envoy, resident, minister, or consul of the crown of *Great Britain* in the country in which such artificer shall be, or by any person authorized by such ambassador, envoy, resident, minister, or consul, or by one of his Majesty’s secretaries of state for the time being, and from thenceforth continually inhabit and dwell within this realm; then and in such case every such person or persons shall be from thenceforth incapable of taking any legacy that shall be devised to him within this kingdom, or of being an executor or administrator to any person or persons within this kingdom; and shall be incapable of taking any lands, tenements, or hereditaments, within this kingdom, by descent, devise, or purchase; and also forfeit all his lands, tenements, hereditaments, goods and chattels within this kingdom, to his Majesty’s use; and shall from thenceforth be, and be deemed and taken to be, an alien, and shall be out of his Majesty’s protection.”

Forfeit all his lands, &c. and be deemed an alien.

Justices of peace may, on complaint of any offence against this act, issue their warrant for the apprehending of the offender, and bind him to appear at the assizes, &c.

Seet. 4. By 5. Geo. 1. c. 27. f. 4. it is further enacted, “ That from and after the said first day of *May* 1719, upon complaint made upon oath before any justice or justices of the peace, that any person or persons is or are endeavouring

“ deavours to seduce or draw away any such manufac-
 “ turer or artificer as aforesaid out of his Majesty’s domi-
 “ nions, for any the purposes aforesaid, or that any such
 “ manufacturer or artificer as aforesaid hath contracted,
 “ promised, or is preparing, to go out of his Majesty’s do-
 “ minions for any of the purposes aforesaid, then and in
 “ such case it shall and may be lawful to and for the justice
 “ or justices of the peace unto whom such complaint shall
 “ be made, to send forth his warrant to bring the person
 “ and persons so complained of before him or them, or
 “ some other of his Majesty’s justices of the peace for the
 “ same county, riding, division, or city : and if, when such
 “ person or persons shall be so brought before such justice or
 “ justices, it shall appear to such justice or justices, by the
 “ oath or oaths of one or more credible witness or witnesses,
 “ or by the confession of the party or parties so brought be-
 “ fore him or them, that the party so complained of was
 “ guilty of any of the said offences, then and in such case it
 “ shall and may be lawful to and for such justice and justices
 “ to bind the person so charged to appear at the next assizes,
 “ general gaol-delivery, or quarter-sessions of the peace, for
 “ the county, city, riding, or division, where such offence
 “ shall be committed, to answer the premises, with reason-
 “ able sureties for such his appearance; and in case such
 “ person or persons shall refuse or neglect to give such se-
 “ curity, then and in such case it shall and may be lawful
 “ to and for such justice and justices to commit the person
 “ or persons so refusing to the county gaol, there to be
 “ kept until the next assizes or next quarter-sessions of the
 “ county, city, riding, or division, where such commitment
 “ shall be, at the election of such justice of the peace, and
 “ until he, she, or they, shall be delivered by due course of
 “ law ; and in case any such artificer or manufacturer shall
 “ be convicted, upon any indictment to be preferred against
 “ him at such assizes or general gaol-delivery, or quarter-
 “ sessions of the peace, as aforesaid, of any such promise
 “ or contract, or preparation to go abroad beyond the seas,
 “ for any of the purposes aforesaid, then and in such case
 “ the person so convicted shall give such security to his Ma-
 “ jesty, his heirs, and successors, not to depart out of his
 “ Majesty’s dominions for any of the purposes aforesaid,
 “ as such Court shall think reasonable, and shall be impris-
 “ oned until such security shall be given.”

Persons re-
fusing to give
such security
may be com-
mitted.

Persons con-
victed shall
give security
not to depart
the kingdom,
or be impris-
oned till such
security
given.

Stat. 5. And by 5. Geo. 1. c. 27. f. 5. “ If any of the
 “ abovementioned offences shall be committed in that part
 “ of *Great Britain* called *Scotland*, the same shall be prose-
 “ cuted in the court of justiciary or the circuits there.”

Offenders in
Scotland to be
prosecuted in
the court of
justiciary or
circuits there.

Rex v. Metcalf,
4 Burr. 2026.

Stat. 6. It is said to have been decided on this statute, that if a defendant be convicted on one information for having seduced four different artificers, yet the Court can only inflict one penalty.

Persons convicted of seducing artificers.

† *Stat. 7.* By 23. Geo. 2. c. 13. it is further enacted, "That if any person or persons shall contract with, entice, persuade, or endeavour to persuade, solicit, or seduce, any manufacturer, workman, or artificer of or in wool, mohair, cotton, or silk, or of or in any manufactures made up of wool, mohair, cotton, or silk, or any of the said materials mixed one with another, or of or in iron, steel, brass, or any other metal, or any clockmaker, watchmaker, or any other manufacturer, workman, or artificer of or in any other of the manufactures of *Great Britain* or *Ireland*, of what nature or kind soever, to go out of this kingdom, or out of the kingdom of *Ireland*, into any foreign country, not within the dominions of or belonging to the crown of *Great Britain*; and shall be lawfully convicted thereof, upon any indictment or information to be preferred or brought against him, her, or them, in his Majesty's court of king's bench at *Westminster*, or by indictment at the assizes or general gaol-delivery for the county, riding, or division, wherein such offence shall be committed (if such offence shall be committed in that part of *Great Britain* called *England*), or by indictment in the court of judicature or any of the circuit courts in *Scotland* (if such offence shall be committed in that part of *Great Britain* called *Scotland*), or by indictment or information in his Majesty's court of king's bench at *Dublin* (if such offence shall be committed in *Ireland*), the person or persons so convicted shall, for every artificer, workman, or manufacturer, so by him, her, or them respectively contracted with, enticed, persuaded, solicited, or seduced, severally forfeit the sum of five hundred pounds of lawful money of *Great Britain*; and shall also suffer imprisonment in the common gaol of the county, riding, division, shire, or stewartry, wherein such offender or offenders shall be respectively convicted, for the space of twelve calendar months, without bail or mainprize, and until such forfeiture shall be paid; and in case of a further conviction, in manner before prescribed by this act, for or upon a second or other subsequent offence of the same kind, the person or persons so again offending shall, upon every second or other subsequent conviction, severally forfeit for every person so by him, her, or them respectively contracted with, enticed, persuaded, solicited, or seduced, the sum of one thousand pounds of lawful money of *Great Britain*; and shall also suffer imprisonment

to forfeit
500l. and be
imprisoned
for twelve
months.
Second of-
fence, to for-
feit 1000l.

" in

“ in the common gaol of the county, riding, division, shire, and be imprisoned for two years.
 “ or stewardry, wherein such offender or offenders shall be
 “ respectively convicted, for the space of two years, with-
 “ out bail or mainprize, and until such forfeiture shall be
 “ paid.”

+ *Sec. 8.* By 23. Geo. 2. c. 13. f. 2. it is provided, “ that
 “ no person shall be prosecuted for any of the offences
 “ afore said, unless such prosecution shall be commenced
 “ within the space of twelve calendar months next after
 “ such offence shall be committed.”

+ *Sec. 9.* It is said, that this latter statute, being upon *Rex v. Cater*,
 the same subject with the former, virtually repeals the higher 4. Burr. 2026.
 degree of punishment on persons whose offences are within
 both the statutes.

+ *Sec. 10.* It is also said, that this latter statute leaves *Per Aston*,
 no discretion in the Court with respect to the penalty, but *Justice*,
 that the punishment directed by it is preceptory. 4. Burr. 2026.

+ *Sec. 11.* By 22. Geo. 3. c. 60. it is enacted, “ That if Penalty on en-
 “ any person or persons shall contract with, entice, persuade, ticing work-
 “ or endeavour to seduce or encourage, any artificer or men employed
 “ workman concerned or employed, or who shall have in printing
 “ worked at, or been employed in, printing calicoes, cot- calicoes, cot-
 “ tons, muslins, or linens, of any sort, or in making or tons, &c.
 “ preparing any blocks, plates, engines, tools, or utensils,
 “ for such manufactory, to go out of Great Britain to any
 “ parts beyond the seas, and shall be convicted thereof,
 “ upon indictment or information in the court of king’s
 “ bench at *Westminster*, or by indictment at the assizes or
 “ general gaol-delivery for the county or place wherein
 “ such offence shall be committed, or the offender or of-
 “ fenders shall live or reside, or by indictment in the court
 “ of justices or any of the circuit courts in *Scotland*, as
 “ the case may be; every person so convicted shall, for
 “ every artificer so contracted with, enticed, persuaded, en-
 “ couraged, or seduced, or attempted so to be, forfeit and
 “ pay the sum of five hundred pounds of lawful money of
 “ Great Britain, and shall be committed to the common
 “ gaol for the county, place, or stewardry, wherein the of-
 “ fender or offenders shall be convicted, there to remain,
 “ without bail or mainprize, for the space of twelve ca-
 “ lendar months, and until such forfeiture shall be paid;
 “ and in case of a subsequent offence of the same kind, the
 “ person or persons so again offending shall, upon the like
 “ conviction, forfeit and pay, for every person so contracted
 “ with, enticed, persuaded, encouraged, or seduced or at-
 “ tempted

“ tempted so to be, the sum of one thousand pounds of
 “ lawful money of *Great Britain*, and shall be committed
 “ to the common gaol as aforesaid, there to remain, with-
 “ out bail or mainprize, for and during the term of two
 “ years, and until such forfeiture shall be paid.”

Prosecution
in twelve
months.

Sect. 12. By 22. Geo. 3. c. 60. s. 2. it is provided, “ That
 “ no person shall be prosecuted for any of the offences
 “ aforesaid, unless such prosecution shall be commenced
 “ within the space of twelve calendar months next after
 “ such offence shall be committed.”

Forfeitures.

Sect. 13. By 22. Geo. 3. c. 60. s. 7. it is further enacted,
 “ That one moiety of the respective forfeitures by this act
 “ inflicted on offenders against the same, shall, when reco-
 “ vered, go and be applied to the use of his Majesty, his
 “ heirs and successors, and the other moiety to the use of
 “ the person or persons who shall sue and prosecute for the
 “ same respectively.”

Limitation of
actions.

Sect. 14. And by 22. Geo. 3. c. 60. s. 8. “ If any ac-
 “ tion or suit shall be commenced against any person for
 “ what he shall do in pursuance of this act, such action or
 “ suit shall be commenced within six calendar months next
 “ after the fact committed; and the person to sued shall
 “ and may file common bail, and enter a common ap-
 “ pearance, and plead the general issue Not Guilty, and
 “ may give this act and the special matter in evidence; and
 “ if the plaintiff or prosecutor shall become nonsuit, or
 “ suffer discontinuance, or if a verdict shall pass against him,
 “ or if, upon demurrer, judgement shall be given against him,
 “ then, and in any of the cases aforesaid, the defendant shall
 “ recover treble costs.”

General issue.

“ may give this act and the special matter in evidence; and
 “ if the plaintiff or prosecutor shall become nonsuit, or
 “ suffer discontinuance, or if a verdict shall pass against him,
 “ or if, upon demurrer, judgement shall be given against him,
 “ then, and in any of the cases aforesaid, the defendant shall
 “ recover treble costs.”

Treble costs.

Penalty on
persons en-
tering artifi-
cers in the
iron or steel
manufactures,
&c. to leave
this kingdom
(except to
Ireland).

Sect. 15. By 25 Geo. 3. c. 67. s. 6. it is enacted, “ That
 “ if any person or persons shall contract with, entice, per-
 “ suade, or endeavour to seduce or encourage, any artificer
 “ or workman concerned or employed, or who shall have
 “ worked at or been employed, in the iron or steel manu-
 “ factures in this kingdom, or in making or preparing any
 “ tools or utensils for such manufactory, to go out of *Great*
 “ *Britain* to any parts beyond the seas (except to *Ireland*),
 “ and shall be convicted thereof, upon indictment or infor-
 “ mation in the court of king’s bench at *Westminster*, or
 “ by indictment at the assizes, or general gaol-delivery, or
 “ quarter sessions, for the county or place wherein such
 “ offence shall be committed, or the offender or offenders
 “ shall live or reside, or by indictment in the court of ju-
 “ diciary or any of the circuit courts in *Scotland*, as the case
 “ may

“ may be; every person so convicted shall, for every artificer so contracted with, enticed, persuaded, encouraged, or seduced, or attempted so to be, forfeit and pay the sum of five hundred pounds of lawful money of *Great Britain*, and shall be committed to the common gaol for the county, place, or stewartry, wherein the offender or offenders shall be convicted, there to remain, without bail or mainprize, for the space of twelve calendar months, and until such forfeiture shall be paid: and in case of a subsequent offence of the same kind, the person or persons so again offending shall, upon the like conviction, forfeit and pay, for every person so contracted with, enticed, persuaded, encouraged, or seduced, or attempted so to be, the sum of one thousand pounds of lawful money of *Great Britain*, and shall be committed to the common gaol as aforesaid, there to remain, without bail or mainprize, for and during the term of two years, and until such forfeitures shall be paid.”

For first offence. 400l. and twelve months imprisonment;

Second, &c. 1000l. and two years imprisonment.

Sect. 16. By 25. Geo. 3. c. 67. f. 7. it is provided, “ That no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be commenced within the space of twelve calendar months next after such offence shall be committed.”

Prosecution to be commenced within twelve months.

Sect. 17. By 25. Geo. 3. c. 67. f. 8. it is further enacted, “ That the several penalties and forfeitures herein before mentioned shall and may be sued for and recovered by action of debt, bill, plaint, or information, in any of his Majesty’s courts of record at *Westminster*, or in the court of exchequer or in the court of session in *Scotland*, in the name of his Majesty’s attorney-general or lord advocate, or in the name of some officer or officers of the customs in *Great Britain* respectively, wherein no essoin, protection, privilege, wager of law, or more than one imparlance, shall be allowed; and that one moiety of the said penalties and forfeitures shall go and be applied to the use of his Majesty, his heirs and successors, and the other moiety to the use of such officer or officers of the customs as shall sue and prosecute for the same respectively, after deducting the charges of prosecution from the whole.”

Penalties and forfeitures how to be recovered and applied.

Sect. 18. And by 25. Geo. 3. c. 67. f. 9. “ If any suit or action shall be commenced against any person for what he shall do in pursuance of this act, such suit or action shall be commenced within three months next after the fact committed; and the person so sued may file common bail, or enter a common appearance, and plead the “ general

Limitation of actions.

General issue. " general issue Not Guilty, and may give this act and the
" special matter in evidence ; and if the plaintiff or prosc-
" cutor shall become nonsuit, or suffer discontinuance, or
" if a verdict pass against him or her, or if, upon demurrer,
Treble costs. " judgment shall be given against the plaintiff, the defendant
" shall recover treble costs."

CHAPTER THE EIGHTY-EIGHTH.

OF EXPORTING TOOLS.

Sect. 1. BY 23. Geo. 2. c. 13. f. 3. it is recited; That Persons exporting utensils of the woollen and silk manufactures, the exportation of the several tools or utensils made use of in preparing, working up, and finishing, the woollen and silk manufactures, or any or either of them, will enable foreigners to work up such manufactures, and thereby greatly diminish the exportation of the same from this kingdom; therefore, for preserving as much as possible to his Majesty's *British* subjects the benefits arising from those great and valuable branches of trade and commerce, be it enacted, That from and after the twenty-fourth day of *June 1750*, if any person or persons in *Great Britain* or *Ireland* shall, upon any pretence whatsoever, load or put on board, or cause to be loaded or put on board, of any ship, vessel, or boat, which shall not be bound directly to some port or place in *Great Britain* or *Ireland*, or to some other of the dominions of the crown of *Great Britain*, any such tools or utensils as are commonly used in, or are proper for the preparing, working up, or finishing of the woollen or silk manufactures, or any or either of them, or any parts or parcels of such tools or utensils, by what name or names such tools or utensils shall or may be called or known, the person or persons so offending shall, for every such offence, not only forfeit and lose all such tools and utensils, or parts thereof, which shall be so loaded or put on board as aforesaid, but also the sum of two hundred pounds of lawful money of *Great Britain*, to be recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at *Westminster*, or in the court of session in *Scotland*, or in any of the four courts at *Dublin* respectively, wherein no essoin, protection, privilege, or wager of law, shall be allowed, or more than one imparlance."

shall forfeit the tools and 200l.

Sect. 2. By 23. Geo. 2. c. 13. f. 4. "It shall and may be lawful to and for any officer of his Majesty's customs Officers of the customs empowered to seize tools found on board ships bound to foreign parts; in

To be sold after condemnation.

“ in *Great Britain*, and for any officer of the revenue in
 “ *Ireland*, to seize and secure in some or one of his Majesty’s
 “ warehouses all such tools or utensils by this act prohibited to be exported as such officer shall find or discover
 “ to be laid or put on board of any ship, vessel, or boat,
 “ which shall not be bound directly to some port or place
 “ in *Great Britain* or *Ireland*, or to some other of the dominions of the crown of *Great Britain*, and every officer
 “ who shall seize and secure any of the said tools or utensils
 “ shall be fully and absolutely indemnified for so doing ;
 “ and all tools or utensils so seized and secured as aforesaid
 “ shall, after condemnation thereof in due course of law,
 “ be publicly sold to the best bidder, and one moiety of the
 “ produce arising by the sale of such tools and utensils shall
 “ be to the use of his Majesty, his heirs and successors, and
 “ the other moiety to the officer who shall seize and secure
 “ the same as aforesaid.”

Captains of vessels permitting such utensils to be put on board, to forfeit 100l.

Seft. 3. By 23. Geo. 2. c. 13. f. 5. “ If the captain or
 “ master of any ship, vessel, or boat, in *Great Britain* or
 “ *Ireland*, shall knowingly permit any of the said tools or
 “ utensils by this act prohibited to be exported as aforesaid,
 “ to be put on board his said ship, vessel, or boat, every such
 “ captain or master shall, for every such offence, forfeit the
 “ sum of one hundred pounds of lawful money of *Great*
 “ *Britain*, to be sued for and recovered in the same manner
 “ as the penalties by this act inflicted upon persons exporting the said tools or utensils are to be sued for and
 “ recovered ; and if the said ship, vessel, or boat, belongs to
 “ his Majesty, his heirs or successors, then the captain or
 “ master thereof shall not only forfeit the sum of one hundred pounds of lawful money of *Great Britain*, to be sued
 “ for and recovered as aforesaid, but shall also forfeit his
 “ employment, and be incapable of any office or employment under his Majesty, his heirs or successors.”

Captains of his Majesty’s ships to forfeit 100l. and to be cashiered.

Officer of the custom-house, signing cockets, &c. for the exporting such tools,

Seft. 4. By 23. Geo. 2. c. 13. f. 6. “ If any customer
 “ comptroller, surveyor, searcher, waiter, or other officer
 “ of the customs in *Great Britain*, or any officer of the revenue in *Ireland*, shall take, or knowingly or willingly
 “ suffer to be taken, any entry outward, or shall sign any
 “ cocket, warrant, or sufferance, for the shipping or exporting of any of the said tools or utensils by this act prohibited to be exported, or shall knowingly or willingly permit or suffer the same to be done, directly or indirectly
 “ contrary to the true intent and meaning of this act, every
 “ such customer, comptroller, surveyor, searcher, waiter, or
 “ other officer of the customs in *Great Britain*, or officer
 “ of the revenue in *Ireland*, so offending, shall forfeit the sum

“ of one hundred pounds of lawful money of *Great Britain*, to forfeit 100*l.*
 “ to be sued for and recovered as aforesaid; and shall also and his em-
 “ forfeit his office, and be incapable of any office or em- ployment.
 “ ployment under his Majesty, his heirs or successors.”

† *Sec. 5.* By 23. Geo. 2. c. 13. s. 7. “ One moiety of One moiety
 “ the respective forfeitures by this act inflicted upon of- to the king,
 “ fenders against the same, shall, when recovered, go and the other to
 “ be applied to the use of his Majesty, his heirs and suc- the prose-
 “ cessors, and the other moiety to the use of the person or cutor.
 “ persons who shall sue and prosecute for the same re-
 “ spectively.”

† *Sec. 6.* And by 23. Geo. 2. c. 13. s. 8. “ If any suit Limitation of
 “ or action shall be commenced against any person for what actions.
 “ he shall do in pursuance of this act, such action shall be
 “ commenced within six months after the fact committed;
 “ and the person so sued may file common bail, or enter a
 “ common appearance, and plead the general issue Not General issue.
 “ Guilty, and may give this act and the special matter in
 “ evidence; and if the plaintiff or prosecutor shall become
 “ nonsuit, or suffer discontinuance, or if a verdict pass
 “ against him, or if, upon demurrer, judgment be given
 “ against him, the defendant shall recover treble costs.” Treble costs.

† *Sec. 7.* By 14. Geo. 3. c. 71. it is recited, That “ the Persons ship-
 “ exportation of the several tools or utensils made use of ping tools, used
 “ in preparing, working up, and finishing the cotton and in the cotton
 “ linen manufactures of this kingdom, or any or either of or linen ma-
 “ them, or any other goods wherein cotton and linen, or nufactures, in
 “ either of them, are used, will enable foreigners to work order to ex-
 “ up such manufactures, and thereby greatly diminish the port the same,
 “ exportation of the same from this kingdom: therefore
 “ it is enacted, that if at any time after the first day of
 “ July 1774, any person or persons in *Great Britain* or
 “ *Ireland* shall, upon any pretence whatsoever, load or put
 “ on board, or cause to be laden or put on board, of any
 “ ship, vessel, or boat, which shall not be bound directly to
 “ some port or place in *Great Britain* or *Ireland*, any such
 “ tools or utensils as are commonly used in, or are proper
 “ for the preparing, working up, or finishing, of the cotton
 “ or linen manufactures, or any or either of them, or any
 “ other goods wherein cotton and linen, or either of them,
 “ are used, or any parts or parcels of such tools or utensils,
 “ by what name or names the same shall or may be called
 “ or known; the person or persons so offending shall, for
 “ every such offence, not only forfeit and lose all such tools
 “ and utensils, or parts or parcels thereof, which shall be to forfeit all
 “ so laden or put on board as aforesaid, but also the sum of such tools, &c.
 “ and 20*l.*
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“two hundred pounds of lawful money of *Great Britain*, to be recovered by action of debt, bill, plaint, or information, in any of his Majesty’s courts of record at *Westminster*, or in the court of session in *Scotland*, or in any of the four courts of *Dublin* respectively, wherein no essoin, protection, privilege, or wager of law, shall be allowed, or more than one imparlance.”

Officers to
seize all tools,
&c.

† *Sec.* 8. By 14. Geo. 3. c. 71. s. 2. “It shall and may be lawful to and for any officer of his Majesty’s customs in *Great Britain*, and for any officer of the revenue in *Ireland*, to seize and secure, in some or one of his Majesty’s watchhouses, all such tools or utensils, or parts or parcels thereof, by this act prohibited to be exported, as such officer shall find or discover to be laid or put on board of any ship, vessel, or boat, which shall not be bound directly to some port or place in *Great Britain* or *Ireland*, and that every officer who shall seize and secure any of the said tools or utensils, or parts or parcels thereof, shall be fully and absolutely indemnified for so doing; and all tools and utensils, or parts or parcels thereof, so seized and secured as aforesaid, shall, after condemnation thereof in due course of law, be publicly sold to the best bidder, and one moiety of the produce arising by the sale of such tools and utensils shall be to the use of his Majesty, his heirs and successors, and the other moiety to the officer who shall seize and secure the same as aforesaid.”

which may be
publicly sold,
&c.

Master per-
mitting such
tools to be
exported,
forfeits 200l.

† *Sec.* 9. By 14. Geo. 3. c. 71. s. 3. “If the captain or master of any ship, vessel, or boat, in *Great Britain* or *Ireland*, shall knowingly permit any tools or utensils, by this act prohibited to be exported as aforesaid, to be put on board his said ship, vessel, or boat, every such captain or master shall, for every such offence, forfeit the sum of two hundred pounds of lawful money of *Great Britain*, to be sued for and recovered in such manner as the penalties by this act upon persons exporting the said tools and utensils are to be sued for and recovered: and if the said ship, vessel, or boat, belongs to his Majesty, his heirs or successors, then the captain or master thereof shall not only forfeit the sum of two hundred pounds, to be sued for and recovered as aforesaid, but shall also forfeit his employment, and be incapable of any office or employment under his Majesty, his heirs or successors.”

and captain
forfeits 200l.
and his com-
mission.

Officer allow-
ing an entry
of such pro-
hibited utensils,
to forfeit 200l. and his office.

† *Sec.* 10. By 14. Geo. 3. c. 71. s. 4. “If any customer, comptroller, surveyor, searcher, waiter, or other officer

“ of the customs in *Great Britain*, or any officer of the revenue in *Ireland*, shall take, or knowingly or willingly suffer to be taken, any entry outward, or shall sign any cocket, warrant, or sufferance, for the shipping or exporting of any of the said tools or utensils by this act prohibited to be exported, or shall knowingly or willingly permit or suffer the same to be done, directly or indirectly, contrary to the true intent and meaning of this act, every such customer, comptroller, surveyor, searcher, waiter, or other officer of the customs of *Great Britain*, or officer of the revenue in *Ireland*, shall, for every such offence, forfeit the sum of two hundred pounds of lawful money of *Great Britain*, to be sued for and recovered as aforesaid, and shall also forfeit his office, and be incapable of holding any office or employment under his Majesty, his heirs or successors.”

+ *Sec. 11.* By 14. Geo. 3. c. 71. s. 5. “ If any person or persons shall collect, obtain, or have, in his, her, or their custody or possession, any such tools or implements as aforesaid, or any tools or implements used in the woollen or silk manufactures of this kingdom, or any parts or parcels thereof, and complaint shall be made upon the oath of one or more credible witness or witnesses, before any justice or justices of the peace, that there is reason to believe such person or persons have or hath collected, obtained, or got into his, her, or their custody or possession, such tools or implements as aforesaid, or parts or parcels thereof, with intent to export the same to some other port or place than *Great Britain* or *Ireland*; then, and in such case, it shall and may be lawful to and for the justice or justices of the peace unto whom such complaint shall be made, to issue his warrant or warrants, not only to seize all such tools or implements, and parts or parcels thereof, but also to bring the person and persons so complained of before him or them, or some other of his Majesty's justices of the peace for the same county, riding, division, or city; and if, when such person or persons shall be so brought before such justice or justices, he, she, or they, shall not give such an account of the use or purpose to which such tools or utensils, or parts or parcels thereof, are intended to be appropriated, as shall be satisfactory to the justice or justices before whom he, she, or they, shall be brought as aforesaid, then, and in such case, it shall and may be lawful to and for such justice or justices, not only to cause all such tools or utensils, or parts or parcels thereof, which shall have been seized as aforesaid, to be detained, but also to bind the person or persons so charged to appear at the next as-

Any person collecting such tools, in order to export the same, [Rep. so far as relates to woollen tools to America, by 15. Geo. 3. c. 5.]

Justices may grant warrants, &c.

and in case
such person
be convicted
he shall lose
all such uten-
sils, and for-
feit each.

“ sizes, general gaol delivery, or quarter-sessions of the
“ peace for the county, city, riding, or division, where such
“ offence shall be committed, with reasonable sureties for
“ his, her, or their appearance; and in case such person or
“ persons shall refuse or neglect to give such security, then,
“ and in such case, it shall and may be lawful to and for
“ such justice and justices to commit the person or persons
“ so refusing to the county gaol, there to be kept until the
“ next assizes or next quarter-sessions of the county, city,
“ riding, or division, where such commitment shall be, at
“ the election of such justice of the peace, and until he, she,
“ or they, shall be delivered by due course of law: and in
“ case any such person or persons shall be convicted upon
“ any indictment or information against him, her, or them,
“ at such assize or general gaol delivery, or quarter-sessions
“ of the peace as aforesaid, of collecting, obtaining, or get-
“ ting into his, her, or their custody or possession, such tools
“ or utensils, or parts or parcels thereof, with such intent
“ as aforesaid; then, and in such case, the person or persons
“ so offending shall, for every such offence, not only forfeit
“ and lose all such tools and utensils, and parts and parcels
“ thereof, which shall be so seized and detained, but also
“ the sum of two hundred pounds of lawful money of *Great*
“ *Britain*, to be recovered by action of debt, bill, plaint, or
“ information, in any of his Majesty’s courts of record at
“ *Wesminster*, or in the court of session in *Scotland*, or in
“ any of the four courts at *Dublin* respectively, wherein no
“ esoin, protection, privilege, wager of law, or more than
“ one imparlance, shall be allowed.

Forfeitures.

† *Stat. 12.* By 14. Geo. 3. c. 71. s. 6. “ One moiety of
“ the respective forfeitures by this act inflicted upon of-
“ fenders against the same, shall, when recovered, go and
“ be applied to the use of his Majesty, his heirs and suc-
“ cessors, and the other moiety to the use of the person or
“ persons who shall sue and prosecute for the same respec-
“ tively.”

Limitations
of actions.

† *Stat. 13.* And by 14. Geo. 3. c. 71. s. 7. “ If any suit
“ or action shall be commenced against any person for what
“ he shall do in pursuance of this act, such action shall be
“ commenced within six months after the fact committed;
“ and the person so sued may file common bail, or enter a
“ common appearance, and plead the general issue Not
“ Guilty, and may give this act and the special matter in
“ evidence, and if the plaintiff or prosecutor shall become
“ nonsuit, or suffer discontinuance, or if a verdict pass
“ against him or her, or if, upon demurrer, judgment be
“ given against the plaintiff, the defendant shall recover
“ treble costs.”

General issue.

* Treble costs.

Stat.

† *Self*. 14. By 21. Geo. 3. c. 37. s. 1. i is enacted, " That *If any person*
 " if, at any time after the twenty-fourth day of *June 1781,* shall pack or
 " any person or persons in *Great Britain or Ireland* shall, put on board
 " upon any pretence whatsoever, load, or put on board, or any vessel any
 " pack, or cause or procure to be laden, put on board, or machine, &c.
 " packed, in order to be loaded or put on board of any ship used in the
 " or vessel, which shall not be bound directly to some port woollen, &c.
 " or place in *Great Britain or Ireland,* or shall lade, or cause manufacture,
 " or procure to be laden, on board any boat or other vessel, or any model
 " or shall bring, or cause to be brought, to any quay, of such ma-
 " wharf, or other place, in order to be so laden or put on chine, &c.
 " board any such ship or vessel, any machine, engine, tool,
 " press, paper, utensil, or implement whatsoever, which now
 " is, or at any time or times hereafter shall or may be used
 " in, or proper for, the preparing, working, pressing, finish-
 " ing, or completing, of the woollen, cotton, linen, or silk
 " manufactures of this kingdom, or any or either of them,
 " or any other goods wherein wool, cotton, linen, or silk,
 " or any or either of them, are or is used, or any part or
 " parts of such machine, engine, tool, press, paper, utensil,
 " or implement, by what name or names soever the same
 " shall be called or known; or any model or plan, or mo-
 " dels or plans, of any such machine, engine, tool, press,
 " paper, utensil, or implement, or any part or parts thereof;
 " and complaint being made, upon the oath of one or
 " more credible witness or witnesses, before any justice or
 " justices of the peace, it shall and may be lawful to and
 " for such justice or justices of the peace to issue his or any justice
 " their warrant or warrants, not only to seize all such may grant a
 " machines, engines, tools, presses, papers, utensils, or im- warrant for
 " plements, and part or parts thereof, and all such model or seizing such
 " plan, models or plans, and part or parts thereof, together machines, &c.
 " with the packages, and all other goods packed therewith,
 " if any such there be, but also to bring the person or per-
 " sons so complained of before him or them, or some other
 " of his Majesty's justices of the peace for the same county,
 " city, riding, division, liberty, shire, stewardry, or place;
 " and if, when such person or persons shall be brought be-
 " fore such justice or justices, he, she, or they, shall not
 " give such an account of the use or purpose to which such
 " machines, engines, tools, presses, papers, utensils, or im-
 " plements, and part or parts thereof, and all such model
 " or plan, models or plans, and part or parts thereof, are in-
 " tended to be appropriated, as shall be satisfactory to the
 " justice or justices before whom he, she, or they, shall be
 " brought as aforesaid, then, and in such case, it shall and
 " may be lawful to and for such justice or justices, not only
 " to cause all such machines, engines, tools, presses, papers,
 " utensils, or imlements, models or plans, or part or parts
 " thereof,

On neglect of giving security, the party may be committed.

Penalty on conviction.

Custom-house officers empowered to seize all such machines, &c. going to be exported.

“ thereof, which shall have been seized as aforesaid, together with the packages, and all other goods packed therewith, to be detained, but also to bind the person or persons so charged to appear at the next assizes, general gaol delivery, or quarter-sessions of the peace for the county, city, riding, division, stewardry, or place, where such offence shall be committed, with reasonable sureties for his, her, or their appearance: And in case such person or persons shall refuse or neglect to give such security, then, and in such case, it shall and may be lawful to and for such justice or justices to commit the person or persons so refusing to the common gaol or house of correction, there to be kept until the next assizes, or next quarter-sessions of the county, city, riding, division, shire, stewardry, or place, where such commitment shall be, and until he, she, or they, shall be delivered by due course of law. And in case any such person or persons shall be convicted of any of the offences aforesaid, upon any indictment or information against him, her, or them, at such assizes or quarter-sessions of the peace as aforesaid, the person or persons so offending shall, for every such offence, not only forfeit all such machines, engines, tools, press, paper, utensils, or implements, models or plans, or part or parts thereof respectively, together with the packages, and all other goods packed therewith, if any such there be, but also the sum of two hundred pounds of lawful money of *Great Britain*, and shall also suffer imprisonment in the common gaol, prison, or house of correction, of the county, city, riding, division, liberty, shire, stewardry, or place, wherein such offender or offenders shall be respectively convicted, for the space of twelve months, without bail or mainprize, and until such forfeiture shall be paid.”

+ *Stat. 15. By 21 Geo. 2 c. 37. s. 2.* “ It shall and may be lawful to and for any officer of his Majesty’s customs in *Great Britain*, and to and for any officer of the revenue in *Ireland*, and they are hereby required, to seize and secure, in some or one of his Majesty’s warehouses, all such machines, engines, tools, press, papers, utensils, or implements or part or parts thereof, and all and every such model or plan, models or plans, or part or parts thereof, as such officer shall find or discover to be laid or put on board, or intended to be laid or put on board, of any ship, vessel, or boat, which shall not be bound directly to some port or place in *Great Britain* or *Ireland*, contrary to the true intent and meaning of this act, together with the packages, and all other goods packed therewith, if any such there be, and they are hereby indemnified in so doing: and all machines, engines, tools, press, papers, utensils,

“ utensils, and implements, or part or parts thereof, model
 “ or plan, models or plans, or part or parts thereof, together
 “ with the packages, and other goods packed therewith,
 “ so seized and secured as aforesaid, shall, after condemna-
 “ tion thereof in due course of law, be publicly sold to the
 “ best bidder, by order of the commissioners of the customs
 “ in *Great Britain*, or commissioners of the revenue in *Ire-*
 “ *land* respectively; and one moiety of the produce arising
 “ by the sale thereof, after deducting the charges of con-
 “ demnation and sale, shall be to the use of his Majesty,
 “ his heirs and successors, and the other moiety to the officer
 “ who shall seize and prosecute the same as aforesaid.”

+ Sect. 16. By 21. Geo. 3. c. 37. s. 3. “ If the captain or
 “ master of any ship, vessel, or boat, in *Great Britain* or
 “ *Ireland*, shall knowingly or designedly permit or suffer any
 “ machine, engine, tool, press, paper, utensil, or implement,
 “ or part or parts thereof, or any model or plan, or part or
 “ parts thereof, by this act prohibited to be exported as
 “ aforesaid, to be put on board his said ship, vessel, or boat,
 “ every such captain or master shall, for every such offence,
 “ forfeit the sum of two hundred pounds; and if the said
 “ ship, vessel, or boat, shall belong to his Majesty, his heirs
 “ or successors, then the captain or master thereof shall not
 “ only forfeit the sum of two hundred pounds, but shall also
 “ forfeit his employment, and be incapable of holding any
 “ office or employment under his Majesty, his heirs or suc-
 “ cessors.”

Penalty on captains taking on board any such machine, &c.

+ Sect. 17. By 21. Geo. 3. c. 37. s. 4. “ If any customer,
 “ comptroller, surveyor, searcher, waiter, or other officer of
 “ the customs in *Great Britain*, or any officer of the revenue
 “ in *Ireland*, shall take, or knowingly or willingly suffer to
 “ be taken, any entry outward, or shall sign any cocket,
 “ warrant, or sufferance, for the shipping or exporting of
 “ any of the said machines, engines, tools, presses, papers,
 “ utensils, or implements, or any part or parts thereof, or
 “ any of the said models or plans, or any part or parts
 “ thereof, by this act prohibited to be exported, or shall
 “ knowingly or willingly permit or suffer the same to be
 “ done, directly or indirectly, contrary to the true intent
 “ and meaning of this act, every such customer, comptroller,
 “ surveyor, searcher, waiter, or other officer of the customs
 “ of *Great Britain*, or officer of the revenue of *Ireland*,
 “ shall, for every such offence, forfeit the sum of two hun-
 “ dred pounds, and shall also forfeit his office, and be inca-
 “ pable of holding any office or employment under his
 “ Majesty, his heirs or successors.”

Penalty on custom-house officers who shall take any entry outward, &c. for exporting any such prohibited machines, &c.

Penalties and
Forfeitures.

† *Sect. 18.* By 21. Geo. 3. c. 37. f. 5. "The several penalties and forfeitures herein-before mentioned (the manner of recovery whereof is not herein-before particularly directed) shall and may be sued for and recovered, by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at *Westminster*, or in the court of session in *Scotland*, or in any of the four courts at *Dublin*, in the name of his Majesty's attorney-general or lord-advocate, or in the name of some officer or officers of the customs in *Great Britain*, or some officer or officers of the revenue in *Ireland* respectively, wherein no essoin, protection, privilege, wager of law, or more than one imparlance, shall be allowed; and one moiety of the said penalties and forfeitures shall go and be applied to the use of his Majesty, his heirs and successors, and the other moiety to the use of such officer or officers of the customs or revenue, as shall sue and prosecute for the same respectively, after deducting the charges of prosecution from the whole."

If oath shall be made of any such prohibited machines, &c. being intended to be exported, they may be seized, &c.

† *Sect. 19.* By 21. Geo. 3. c. 37. f. 6. "If any person or persons hath or have in his, her, or their custody, power, or possession, or shall collect, obtain, make, apply for, or cause or procure to be made, any such machine, engine, tool, press, paper, utensil, or implement, or any part or parts thereof, or any such model or plan, models or plans, or part or parts thereof, as aforesaid, with intent to export, or that the same may be exported to some other port or place than *Great Britain* or *Ireland*, and complaint being made, upon the oath of one or more credible witnesses or witnesses, before any justice or justices of the peace, that there is reason to believe such person or persons hath or have in his, her, or their custody, power, or possession, or hath or have collected, obtained, made, applied for, or caused or procured to be made, any such machine, engine, tool, press, paper, utensil, or implement, or part or parts thereof, or any such model or plan, or models or plans, or part or parts thereof, as aforesaid, with intent to export, or that the same may be exported, to some other port or place than *Great Britain* or *Ireland*; then, and in any of the said cases, it shall and may be lawful to and for the said justice or justices of the peace to issue his or their warrant or warrants to seize all such machines, engines, tools, presses, papers, utensils, or implements, or part or parts thereof, and all such models or plans, or part or parts thereof, as aforesaid, and to bring the person or persons so complained of before him or them, or some other of his Majesty's justices of the peace for the same county, city, riding, division, shire, stewartry, or place;

"and

" and if such person or persons shall not give such an ac-
 " count of the use or purpose to which such machines, en-
 " gines, tools, preſs, papers, utenſils, or implements, or part
 " or parts thereof, models or plans, or part or parts thereof,
 " is, are, or were intended to be appropriated, as ſhall be
 " ſatisfactory to the juſtice or juſtices before whom he, ſhe,
 " or they, ſhall be brought as aforeſaid, then, and in ſuch
 " caſe, it ſhall and may be lawful to and for ſuch juſtice or
 " juſtices to cauſe all ſuch machines, engines, tools, preſs,
 " paper, utenſils, or implements, or part or parts thereof,
 " models or plans, or part or parts thereof, which ſhall
 " have been ſo ſeized as aforeſaid, to be detained, and alſo
 " to bind the perſon or perſons ſo charged to appear at the
 " next aſſizes, general gaol-delivery, or quarter-ſeſſions of
 " the peace, for the county, city, riding, diviſion, ſhire,
 " ſtewartry, or place, where ſuch offence ſhall be committed,
 " with reaſonable ſureties for his, her, or their appearance :
 " And in caſe ſuch perſon or perſons ſhall reſuſe or neglect
 " to give ſuch ſecurity, then, and in ſuch caſe, it ſhall and
 " may be lawful to and for ſuch juſtice or juſtices to com-
 " mit ſuch perſon or perſons to the county gaol, priſon, or
 " houſe of correction, there to remain until the next aſſizes
 " or quarter-ſeſſions of the county, city, riding, diviſion,
 " liberty, ſtewartry, or place, where ſuch commitment ſhall
 " be, and until he, ſhe, or they, ſhall be delivered by due
 " courſe of law. And in caſe any ſuch perſon or perſons
 " ſhall be convicted, upon any indictment or information
 " againſt him, her, or them, at ſuch aſſizes or quarter-ſeſ-
 " ſions of the peace as aforeſaid, of having in his, her, or
 " their cuſtody, power, or poſſeſſion, or of having collected,
 " obtained, made, applied for, or cauſed or procured to be
 " made, any ſuch machine, engine, tool, preſs, paper, uten-
 " ſil, or implement, or part or parts thereof, model or plan,
 " or part or parts thereof, with ſuch intent as aforeſaid,
 " then, and in ſuch caſe, the perſon or perſons ſo convicted
 " ſhall, for every ſuch offence, forfeit and loſe all ſuch ma-
 " chines, engines, tools, preſs, papers, utenſils, or imple-
 " ments, or part or parts thereof, models or plans, or part
 " or parts thereof, which ſhall be ſo ſeized and detained,
 " and alſo the ſum of two hundred pounds of lawful money
 " of Great Britain ; and ſhall ſuffer imprisonment in the
 " common gaol of the county, city, riding, diviſion, ſhire,
 " ſtewartry, or place, wherein ſuch offender or offenders
 " reſpectively ſhall be convicted, for the ſpace of twelve
 " months, without bail or mainprize, and until ſuch for-
 " feiture ſhall be paid : provided nevertheless, that no per-
 " ſon ſhall be proſecuted for any of the offences aforeſaid
 " in this clauſe mentioned, unleſs ſuch proſecution ſhall be
 " commenced within the ſpace of twelve months next after
 " ſuch offence ſhall be committed."

On neglect of giving ſecurity, the party may be committed.

Penalty on conviction.

Proſecution within twelve months.

Sect.

- Forfeiture to
informer. † *Sect.* 20. By 21. Geo. 3. c. 37. f. 7. "The respective
" forfeitures by this act inflicted upon offenders against the
" same, shall, when recovered (where the same is not by
" this act otherwise provided), go and be applied to the use
" of the informer, after the expences of the prosecution are
" paid."
- Limitation of
actions. † *Sect.* 21. By 21. Geo. 3. c. 37. f. 8. "If any suit or
" action shall be commenced against any person for what
" he shall do in pursuance of this act, such suit or action
" shall be commenced within six months next after the fact
" committed, and the person so sued may file common bail,
" or enter a common appearance, and plead the general
General issue. " issue Not Guilty, and may give this act and the special
" matter in evidence; and if the plaintiff or prosecutor shall
" become nonsuit, or suffer discontinuance, or if a verdict
" pass against him or her, or if, upon demurrer, judgment
" shall be given against the plaintiff, the defendant shall
Treble costs. " recover treble costs."
- Not to extend
to wool cards,
&c. exported
to America. † *Sect.* 22. But by 21. Geo. 3. c. 37. f. 9. it is provided,
" That nothing herein contained shall extend to the pre-
" venting wool cards, or stock cards, not exceeding in value
" four shillings *per* pair, and spinners' cards not exceeding
" in value one shilling and six-pence *per* pair, used in the
" said woollen manufacture, from being exported to any of
" his Majesty's colonies or plantations in *America*."
- Penalty on
exporting, or
attempting to
export, any
blocks, &c. † *Sect.* 23. By 22. Geo. 3. c. 60. f. 3. it is enacted, "That
" it shall not be lawful for any person or persons whom-
" soever to export from *Great Britain* to any parts beyond
" the seas, any blocks, plates, engines, tools, or utensils,
" commonly used in, or which are proper for the preparing,
" working up, or finishing, of the callico, cotton, muslin,
" or linen printing manufactures, or any part or parts of
" such blocks, plates, engines, tools, or utensils; and if any
" person or persons shall put, or endeavour to put, on
" board any ship, boat, barge, lighter, or other vessel, not
" bound directly to some port in *Great Britain*, any such
" blocks, plates, engines, tools, or utensils, or part or parts
" thereof, every such person shall forfeit all such blocks,
" plates, engines, tools, or utensils, or part or parts thereof;
" and also shall forfeit and pay the sum of five hundred
" pounds of lawful money of *Great Britain*, to be recovered
" by action of debt, bill, plaint, or information, in any of
" his Majesty's courts of record at *Westminster*, or in the
" court of session in *Scotland* respectively, wherein no es-
" coin, protection, or wager of law, nor more than one
" impurance, shall be allowed."

† *Sect. 24.* By 22. Geo. 3. c. 60. f. 4. "It shall be lawful for any officer or officers of his Majesty's customs or excise, and they are hereby required and directed, from time to time, to seize, and secure in some of his Majesty's warehouses, all such blocks, plates, engines, tools, or utensils, or part or parts thereof, the exportation whereof is hereby prohibited, as he or they shall find, or be informed to be, on board, or in a way of being put on board, any ship, boat, barge, lighter, or other vessel, not bound directly to some port in *Great Britain*; and all blocks, plates, engines, tools, or utensils, or part or parts thereof, so seized, shall, after condemnation thereof in due course of law, be publicly sold to the best bidder, to be used in *Great Britain*, and not elsewhere; and one moiety of the produce shall go to the use of his Majesty, his heirs and successors, and the other moiety to the officer or officers who shall have seized and secured the same."

Officers empowered to seize such blocks, &c.

† *Sect. 25.* By 22. Geo. 3. c. 60. f. 5. "If the captain, master, mate, or other officer, of any ship or other vessel in *Great Britain* or *Ireland*, shall willingly or knowingly permit or suffer any such blocks, plates, engines, tools, or utensils, or part or parts thereof, to be put on board his or their ship or other vessel, or shall connive at the same being done, he or they shall, for every such offence, forfeit and pay the sum of one hundred pounds of lawful money of *Great Britain*, to be recovered as the penalties by this act imposed on persons exporting blocks, or other things, as aforesaid, are directed to be recovered; and if the ship or vessel belongs to his Majesty, his heirs or successors, the captain or other officer or officers thereof, so permitting, suffering, or conniving, shall, besides forfeiting the said sum of one hundred pounds, be, and is and are hereby declared to be, incapable of holding any office or commission under his Majesty, his heirs or successors."

Penalty on captains, &c. who shall permit such blocks, &c. to be put on board.

† *Sect. 26.* By 22. Geo. 3. c. 60. f. 6. "If any officer or officers of his Majesty's customs shall take, or knowingly and willingly permit or allow or suffer to be taken, any entry or entries outward, or sign any cocket or cockets or sufferance, for the shipping or exporting of any of the said blocks, plates, engines, tools, or utensils, or part or parts thereof, or knowingly suffer the same to be done, he or they shall forfeit and pay the sum of one hundred pounds of lawful money of *Great Britain*, to be recovered in manner aforesaid; and shall also forfeit and lose his or their office or employment, and be for ever rendered incapable of holding any office or employment under his Majesty, his heirs or successors."

Penalty on officers who shall take any entry outward for exporting any of the said blocks, &c.

Forfeitures.

† *Sect. 27.* By 22. Geo. 3. c. 60. f. 7. “ One moiety of the respective forfeitures by this act inflicted on offenders against the same, shall, when recovered, go and be applied to the use of his Majesty, his heirs and successors; and the other moiety to the use of the person or persons who shall sue and prosecute for the same respectively.”

Limitation of actions.

† *Sect. 28.* And by 22. Geo. 3. c. 60. f. 8. “ If any action or suit shall be commenced against any person for what he shall do in pursuance of this act, such action or suit shall be commenced within six calendar months next after the fact committed; and the person so sued shall

General issue.

“ and may file common bail, and enter a common appearance, and plead the general issue Not Guilty, and may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict shall pass against him, or if, upon demurrer, judgment shall be given against him, then, and in any of the cases aforesaid, the defendant shall

Treble costs.

“ recover treble costs.”

† *Sect. 29.* By 25. Geo. 3. c. 67. f. 1. it is recited, That the exportation of the several tools and utensils made use of in preparing, working up, and finishing, the iron and steel manufactures of this kingdom, or either of them, will enable foreigners to work up such manufactures, and thereby greatly diminish the exportation of the same from this kingdom: therefore, for the preserving as much as possible to his Majesty's subjects the benefits arising from those great and valuable branches of trade and commerce, it is enacted, That if, at any time after the first day of

No person to put on board any vessel for exportation any tool, &c. in the act specified,

“ *August 1785*, any person or persons in *Great Britain* shall, upon any pretence whatsoever, export, load, or put on board, or pack, or cause or procure to be laden, put on board, or packed, in order to be loaded or put on board, of any ship or vessel which shall be bound to some port or place in parts beyond the seas (except to *Ireland*), or shall lade, or cause or procure to be laden, on board any boat or other vessel, or shall bring, or cause to be brought, to any quay, wharf, or other place, in order to be so laden or put on board any such ship or vessel, any tool or utensil hereafter mentioned; that is to say, hand stamps, dog-head stamps, pulley stamps, stamps of all sorts, hammers and anvils for stamps, screws for stamps, iron rods for stamps, presses of all sorts, in iron, steel, or other metal, which are used for giving impressions to metal, or any parts of these several articles; presses of all sorts called *Cutting-out Presses*, beds and punches to be used therewith; piercing presses of all sorts, beds and punches to

“ be

“ be used therewith, either in parts or pieces, or fitted to-
 “ gether; iron or steel dies to be used in stamps or presses,
 “ either with or without impressions on them; rollers of
 “ cast iron, wrought iron, or steel, for rolling of metal, and
 “ frames for the same; flasks or casting-moulds, and boards
 “ used therewith; lathes of all sorts for turning, burnishing,
 “ polishing, either the whole together, or separate parts
 “ thereof; lathe strings, polishing brushes, scoring or shad-
 “ ing engines, presses for horn buttons, dies for horn but-
 “ tons, sheers for cutting of metal, rolled steel, rolled metal
 “ with silver thereon, parts of buttons not fitted up into
 “ buttons or in an unfinished state; engines for chasing,
 “ stocks for casting buckles, buttons, and rings; cast-iron
 “ anvils and hammers for forging mills for iron and copper;
 “ roles, slitters, beds, pillars and frames for slitting mills;
 “ die-sinking tools of all sorts, engines for making button
 “ shanks, laps of all sorts, drilling engines, tools for pinch-
 “ ing of glass, engines for covering of whips, polishing
 “ brushes, bars of metal covered with gold or silver, iron or
 “ steel screw plates, pins, and stocks for making screws, or
 “ any other tool or utensil whatsoever, which now is, are,
 “ or at any time or times hereafter shall or may be used in,
 “ or proper for the preparing, working, finishing, or com-
 “ pleting, of the iron or steel manufactures of this kingdom,
 “ or either of them, by what name or names soever the same
 “ shall be called or known, or any model or plan, or models
 “ or plans, of any such tool, utensil, or implement, or any
 “ part or parts thereof; the person or persons so offending on penalty of
 “ shall, for every such offence, not only forfeit and lose all forfeiture
 “ such tools or utensils, or parts or parcels thereof, together thereof;
 “ with the packages, and all other goods packed therewith,
 “ if any such there be; and complaint being made, upon
 “ the oath of one or more credible witness or witnesses,
 “ before any justice or justices of the peace, it shall and
 “ may be lawful to and for such justice or justices of the
 “ peace to issue his or their warrant or warrants to bring
 “ the person or persons so complained of before him or
 “ them, or some other of his Majesty’s justices of the peace
 “ for the same county, city, riding, division, liberty, shire,
 “ stewartry, or place; and if, when such person or persons and if the of-
 “ shall be brought before such justice or justices, he, she, or fender shall
 “ they, shall not give such an account of the use or purpose not give a sat-
 “ to which such tools, utensils, or implements, and part or isfactory ac-
 “ parts thereof, and all such model or plan, models or plans, count before
 “ and part or parts thereof, are intended to be appropriated, themagistrate,
 “ as shall be satisfactory to the justice or justices before he shall be
 “ whom he, she, or they, shall be brought as aforesaid, bound to ap-
 “ then, and in such case, it shall and may be lawful to and pear at the
 “ for such justice or justices to bind the person or persons next assizes,
 “ &c.
 “ so

or be com-
mitted for
trial.

Penalty on
conviction.

“ so charged to appear at the next assizes, general gaol deli-
“ very, or quarter-sessions of the peace for the county, city,
“ riding, division, stewardry, or place, where such offence
“ shall be committed, with reasonable sureties for his, her,
“ or their appearance; and in case such person or persons
“ shall refuse or neglect to give such security, then, and in
“ such case, it shall and may be lawful to and for such jus-
“ tice or justices to commit the person or persons so refusing
“ to the common gaol or house of correction, there to be
“ kept until the next assizes, or next quarter-sessions of the
“ county, city, riding, division, shire, stewardry, or place,
“ where such commitment shall be, and until he, she, or
“ they, shall be delivered by due course of law: And in case
“ any such person or persons shall be convicted of any of
“ the offences aforesaid, upon any indictment or informa-
“ tion against him, her, or them, at such assizes or quarter-
“ sessions of the peace as aforesaid, the person or persons so
“ offending shall, for every such offence, forfeit the sum of
“ two hundred pounds of lawful money of *Great Britain*,
“ and shall also suffer imprisonment in the common gaol,
“ prison, or house of correction, of the county, city, riding,
“ division, liberty, shire, stewardry, or place, wherein such
“ offender or offenders shall be respectively convicted, for
“ the space of twelve months, without bail or main-prize,
“ and until such forfeiture shall be paid.”

Officers of the
customs to
seize all such
tools, &c. laid,
or intended
to be laid, on
board any out-
ward-bound
vessel;

such goods
to be sold.

+ *Sect. 30. By 25. Geo. 3. c. 67. f. 2.* “ It shall and may
“ be lawful to and for any officer of his Majesty’s customs
“ in *Great Britain*, and they are hereby required, to seize
“ and secure, in some or one of his Majesty’s warehouses,
“ all such tools, utensils, or implements, or part or parts
“ thereof; and all and every such model or plan, models
“ or plans, or part or parts thereof, as such officer shall find
“ or discover to be laid or put on board, or intended to be
“ laid or put on board, of any ship, vessel, or boat, which
“ shall be bound to some port or place in parts beyond the
“ seas (except to *Ireland*), contrary to the true intent and
“ meaning of this act, together with the packages, and all
“ other goods packed therewith (if any such there be), and
“ they are hereby indemnified in so doing; and all tools,
“ utensils, and implements, or part or parts thereof, model
“ or plan, models or plans, or part or parts thereof, toge-
“ ther with the packages, and other goods packed therewith,
“ so seized and secured as aforesaid, shall, after condem-
“ nation thereof in due course of law, be publicly sold to
“ the best bidder, by order of the commissioners of the
“ customs in *Great Britain* respectively; and one moiety
“ of the produce arising by the sale thereof, after deducting
“ the charges of condemnation and sale, shall be to the use
“ of

“ of his Majesty, his heirs and successors, and the other
 “ moiety to the officer who shall seize and prosecute for
 “ the same as aforesaid.”

† *Seet.* 31. By 25. Geo. 3. c. 67. f. 3. “ If the captain or master of any ship, vessel, or boat, in *Great Britain*, shall knowingly or designedly permit or suffer any tool, utensil, or implement, or part or parts thereof, or any model or plan, or part or parts thereof, by this act prohibited to be exported as aforesaid, to be put on board his said ship, vessel, or boat, every such captain or master shall, for every such offence, forfeit the sum of two hundred pounds; and if the said ship, vessel, or boat, shall belong to his Majesty, his heirs or successors, then the captain or master thereof shall not only forfeit the sum of two hundred pounds, but shall also forfeit his employment, and be incapable of holding any office or employment under his Majesty, his heirs or successors.”

Penalty on masters of vessels who shall permit any such tools, &c. to be put on board.

† *Seet.* 32. By 25. Geo. 3. c. 67. f. 4. “ If any customs comptroller, surveyor, searcher, waiter, or other officer of the customs in *Great Britain*, shall take, or knowingly or willingly suffer to be taken, any entry outward, or shall sign any cocquet, warrant, or surrurance, for the shipping or exporting of any of the said tools, utensils, or implements, or any part or parts thereof, or any of the said models or plans, or any part or parts thereof, by this act prohibited to be exported, or shall knowingly or willingly permit, or suffer the same to be done, directly or indirectly, contrary to the true intent and meaning of this act; every such customs comptroller, surveyor, searcher, waiter, or other officer of the customs of *Great Britain*, shall, for every such offence, forfeit the sum of two hundred pounds, and shall also forfeit his office, and be incapable of holding any office or employment under his Majesty, his heirs or successors.”

Penalty on officers of customs taking any entry outwards, &c. for such tools or utensils.

† *Seet.* 33. By 25. Geo. 3. c. 67. f. 5. “ If any person or persons hath or have in his, her, or their custody, power, or possession, or shall collect, obtain, make, apply for, or cause or procure to be made, any such tool, utensil, or implement, or any part or parts thereof, or any such model or plan, models or plans, or part or parts thereof, as aforesaid, with intent to export, or that the same may be exported out of *Great Britain* to any port or place beyond the seas (except to *Ireland*); and complaint being made, upon the oath of one or more credible witnesses or witnesses, before any justice or justices of the peace, that there is reason to believe such person or persons hath or have in his,

Any person having in possession any such tool, utensil, &c. with intent to export the same, any justice may issue his warrant for seizing thereof, and bringing such person before him;

and if he shall not give a satisfactory account thereof, such tools, &c. may be detained, and the possessor bound over to appear at the next assizes, &c.

or may be committed.

Penalty in case of conviction.

his, her, or their custody, power, or possession, or hath or have collected, obtained, made, applied for, or caused or procured to be made, any such tool, utensil, or implement, or part or parts thereof, or any such model or plan, or models or plans, or part or parts thereof, as aforesaid, with intent to export, or that the same may be exported to some other port or place than *Great Britain* or *Ireland*; then, and in any of the said cases, it shall and may be lawful to and for the said justice or justices of the peace to issue his or their warrant or warrants to seize all such tools, utensils, or implements, or part or parts thereof, and all such models or plans, or part or parts thereof, as aforesaid, and to bring the person or persons so complained of before him or them, or some other of his Majesty's justices of the peace for the same county, city, riding, division, shire, stewartry, or place; and if such person or persons shall not give such an account of the use or purpose to which such tools, utensils, or implements, or part or parts, models or plans, or part or parts thereof, is, are, or were intended to be appropriated, as shall be satisfactory to the justice or justices before whom he, she, or they shall be brought as aforesaid, then, and in such case, it shall and may be lawful to and for such justice or justices to cause all such tools, utensils, or implements, or part or parts thereof, models or plans, or part or parts thereof, which shall have been so seized as aforesaid, to be detained, and also to bind the person or persons so charged to appear at the next assizes, general gaol delivery, or quarter-sessions of the peace for the county, city, riding, division, shire, stewartry, or place, where such offence shall be committed, with reasonable sureties for his, her, or their appearance; and in case such person or persons shall refuse or neglect to give such security, then, and in such case, it shall and may be lawful to and for such justice or justices to commit such person or persons to the county gaol, prison, or house of correction, there to remain until the next assizes or quarter-sessions of the county, city, riding, division, liberty, stewartry, or place, where such commitment shall be, and until he, she, or they, shall be delivered by due course of law: And in case any such person or persons shall be convicted, upon any indictment or information against him, her, or them, at such assizes or quarter-sessions of the peace as aforesaid, of having in his, her, or their custody, power, or possession, or of having collected, obtained, made, applied for, or caused or procured to be made, any such tool, utensil, or implement, or part or parts thereof, model or plan, or part or parts thereof, with such intent as aforesaid, then, and in such case, the person or persons

“ persons so convicted shall, for every such offence, forfeit
 “ and lose all such tools, utensils, or implements, or part or
 “ parts thereof, models, or plans, or part or parts thereof,
 “ which shall be so seized and detained, and also the sum of
 “ two hundred pounds of lawful money of *Great Britain*,
 “ and shall suffer imprisonment in the common gaol of the
 “ county, city, riding, division, shire, stewartry, or place,
 “ wherein such offender or offenders respectively shall be
 “ committed, for the space of twelve months, without bail
 “ or mainprize, and until such forfeiture shall be paid.”

† *Seet.* 34. By 25. Geo. 3. c. 67. s. 7. “ Provided always, Prosecution to be commenced within twelve months.
 “ that no person shall be prosecuted for any of the offences
 “ aforesaid, unless such prosecution shall be commenced
 “ within the space of twelve calendar months next after
 “ such offence shall be committed.”

† *Seet.* 35. By 25. Geo. 3. c. 67. s. 8. it is further Penalties and forfeitures herein how to be recovered and applied.
 enacted, “ That the several penalties and forfeitures herein-
 “ before mentioned shall and may be sued for and recovered
 “ by action of debt, bill, plaint, or information, in any of
 “ his majesty’s courts of record at *Westminster*, or in the
 “ court of exchequer, or in the court of session, in *Scotland*,
 “ in the name of his majesty’s attorney-general, or lord-
 “ advocate, or in the name of some officer or officers of the
 “ customs in *Great Britain* respectively, wherein no esoin,
 “ protection, privilege, wager of law, or more than one
 “ imparlance, shall be allowed, and that one moiety of
 “ the said penalties and forfeitures shall go and be applied
 “ to the use of his majesty, his heirs, and successors, and the
 “ other moiety to the use of such officer or officers of the
 “ customs as shall sue and prosecute for the same respec-
 “ tively, after deducting the charges of prosecution from
 “ the whole.”

† *Seet.* 36. By 25. Geo. 3. c. 67. s. 9. it is further Limitation of actions.
 enacted, “ That if any suit or action shall be commenced
 “ against any person for what he shall do in pursuance of
 “ this act, such suit or action shall be commenced within
 “ three months next after the fact committed; and the
 “ person so sued may file common bail, or enter a common
 “ appearance, and plead the general issue Not guilty, and General issue.
 “ may give this act and the special matter in evidence; and
 “ if the plaintiff or prosecutor shall become nonsuit, or
 “ suffer discontinuance, or if a verdict pass against him or
 “ her, or if, upon demurrer, judgment shall be given against
 “ the plaintiff, the defendant shall recover treble costs.” Treble costs.

From July 10, 1786, such tools used in the iron and steel manufactures, &c. may be exported, as might have been before passing recited act, except the articles herein specified.

† Sect. 37. By 26. Geo. 3. c. 89. it is enacted, "That it shall and may be lawful to export from *Great Britain* to the *British* islands in the *West-Indies*, or to any other foreign part or place whatever, any tools or utensils made use of in the iron or steel manufactures of this kingdom, which might have been legally exported before the passing of the before-recited act (except the several articles hereinafter particularly enumerated; that is to say, rollers either plain, grooved, or of any other form or denomination, of cast-iron, wrought-iron, or steel, for the rolling of iron, or any sort of metals and frames, beds, pillars, screws, pinions, and each and every implement, tool, or utensil thereunto belonging; rollers, sliders, frames, beds, pillars, and screws for sitting mills; presses of all sorts in iron, steel, or other metals, which are used with a screw exceeding one inch and a half in diameter; or any parts of these several articles, or any model or models of any of the before-mentioned utensils, implements, and machines, or any part or parts thereof; and all sorts of utensils, engines, or machines used in the casting or boring of cannon, or any sort of artillery, or any parts thereof, or any model or models of tools, utensils, engines, or machines used in casting or boring of cannon, or any sort of artillery, or any parts thereof; hand-stamps, dog-head stamps, pulley stamps, hammers, and anvils for stamps, presses of all sorts, called *cutting-out presses*, beds, and punches, to be used therewith; piercing presses of all sorts, beds, and punches to be used therewith, either in parts or pieces, or fitted together; scoring or shading engines, presses for horn buttons, dies for horn buttons, rolled metal with silver thereon, parts of buttons not fitted up into buttons, or in an unfinished state; engines for chasing, stocks for casting buckles, buttons, and rings; die-sinking tools of all sorts, engines for making button-thanks, laps of all sorts, tools for pinching of glass, engines for covering of whips, bars of metals covered with gold or silver, burnishing stones commonly called *blood stones*, either in the rough state or finished for use); any thing in the said recited act to the contrary in any-wise notwithstanding."

No person to have in possession, with intent to export (except to Ireland) any of the articles herein specified. Recited act, so far as relates to exporters of articles therein enumerated, to extend to exporters of articles specified in this act.

† Sect. 38. By 26. Geo. 3. c. 89. s. 2. "It shall not be lawful for any person or persons, in the kingdom of *Great Britain*, to export to parts beyond the seas (except to *Ireland*), or to have in his or their possession, with the intent so to export, any of the tools and utensils herein-

" after

“ after mentioned; that is to say, wire moulds for making
 “ paper; wheels made of metal, stone, or wood, for cutting,
 “ roughing, smoothing, polishing, and engraving glass;
 “ purcellas, pincers, sheers, and pipes, used in blowing
 “ glass; potters wheels and potters lathes for plain, round,
 “ and for engine-turning tools, used by sadlers, harness-
 “ makers, and bridle-makers, namely, cantle-strainers, side-
 “ strainers, point-strainers, creasing-irons, screw-creasers,
 “ wheel-irons, seat-irons, pricking-irons, bolstering-irons,
 “ clams, head-knives; and that the said recited act, so far
 “ as the same concerns the exporters or possessors of the
 “ tools and utensils therein enumerated or described, shall
 “ extend, or be construed to extend, to all and every the
 “ exporters or possessors of the tools and utensils herein
 “ enumerated or described, as fully, to all intents and pur-
 “ poses, as if the same were repeated and re-enacted in the
 “ body of this act.”

† *Stat.* 39. By 26. Geo. 3. c. 89. s. 3. it is further *Continuance*
 enacted, “ That this act shall continue in force until the of this act.
 “ end of the next session of parliament, and no longer.”

CHAPTER THE EIGHTY-NINTH.

EMBEZZLING NAVAL STORES.

† *Stat. 1.* **BY** 9. and 10. Will. 3. c. 41. IT IS RECITED, 1. Geo. 1. c. 25. 9. Geo. 1. c. 8.
 “ That notwithstanding divers good laws
 “ made and enacted, for the preventing of the stealing and
 “ embezzlement of his majesty’s stores of war, and naval
 “ stores, those frauds, thefts and embezzlements, are fre-
 “ quently practised, and the convicting of such offenders is
 “ rendered difficult and impracticable, by reason it rarely
 “ happens that direct proof can be made of such offender’s
 “ immediate taking embezzling, or carrying away any of
 “ his majesty’s laid stores of war and naval stores out of or
 “ from his majesty’s store-houses, docks, yards, ships, ord-
 “ nance, or other places for keeping and preserving the
 “ same, but only that such goods are marked with the king’s
 “ mark, and found in the custody and possession of the said
 “ person accused for stealing or embezzling the same, to the
 “ great encouragement of such wicked offenders, and to his
 “ majesty’s and the kingdom’s great damage: for preventing
 “ such embezzlements for the future, and for the more
 “ effectual execution of the laws and statutes already in
 “ force against such embezzlements and thefts, it is
 “ therefore enacted, that from and after the four-and-
 “ twentieth day of *June*, one thousand six hundred
 “ shall not be lawful to or for any per-

“ or commissioners of the navy, ordnance, or victualling
 “ office, for his majesty’s use, to make any stores of war or king
 “ naval stores whatsoever, with the marks usually used to shall be made
 “ and marked upon his majesty’s laid warlike and naval or with the
 “ ordnance stores; that is to say, any cordage of three king’s marks,
 “ inches and upwards, wrought with a white thread laid the xc.
 “ contrary way, or any smaller cordage, to wit, from three
 “ inches downwards, with a twine in lieu of a white thread,
 “ laid

Penalty.

“laid to the contrary way as aforesaid; or any canvas wrought or unwrought, with a blue streak in the middle, or any other stores with the broad arrow, by stamp, brand, or otherwise, upon pain that every such person or persons who shall make such goods so marked as aforesaid, not being a contractor with his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, for his majesty's use, or employed by such contractor for that purpose as aforesaid, shall, for every such offence, forfeit such goods, and the sum of two hundred pounds, together with costs of suit; one moiety whereof shall be to his majesty, and the other moiety to the informer, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, wherein no essoin, privilege, protection, wager of law, injunction, or order of restraint, nor more than one imparlance, shall be allowed.”

Penalty on person in whose custody such marked stores are found, &c.
2. *Ld. Ray.*
1104.
'By 9. Geo. 1. c. 8. sect. 3. and 4. the penalty of this act may be mitigated.'

† *Sec. 2.* By 9. and 10. Will. 3. c. 41. f. 2. it is further enacted, “That such person or persons, in whose custody, possession, or keeping, such goods or stores marked as aforesaid shall be found, not being employed as aforesaid, and such person or persons who shall conceal such goods or stores marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods, and the sum of two hundred pounds, together with the costs of prosecution, one moiety to his majesty, and the other moiety to the informer, to be recovered as aforesaid, and shall also suffer imprisonment until payment and performance of the said forfeiture, unless such person shall, upon his trial, produce a certificate under the hand of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights of such goods as he or she shall then be indicted for, and the occasion and reason of such goods coming to his or her hands or possession.”

Commissioners of the navy, ordnance, &c. may sell any of the said stores so marked, &c.

† *Sec. 3.* By 9. and 10. Will. 3. c. 41. f. 4. it is further enacted, “That the said principal officers or commissioners of the navy, ordnance, or victualling-office for the time being, may sell and dispose of any of the stores aforesaid, so marked as aforesaid, as they did or might have done before the making of this act; and that such person or persons as heretofore have or shall hereafter buy any such stores, or other stores so marked as aforesaid, of the said principal officers or commanders, or by their order, may keep and enjoy the same without incurring the penalty of
“this

“ this act, or any law to the contrary whatsoever, upon
 “ producing a certificate or certificates under the hand and
 “ seal of three or more of the said principal officers or
 “ commissioners of the navy, ordnance, or victualling-
 “ office, that they bought such goods from them the said
 “ principal officers or commissioners, or from such person
 “ or persons as did buy the said stores from the said prin-
 “ cipal officers or commissioners, at any time before such
 “ stores were found in their custody; in which certificate
 “ or certificates the quantities of such stores shall be ex-
 “ pressed, and the time when and where bought of the said
 “ commissioners, who, or any three or more of them, for
 “ the time being, are hereby impowered and directed, from
 “ time to time, to give to such person or persons who shall
 “ desire the same, and have bought, and shall hereafter buy
 “ any of the aforesaid stores, within thirty days after the
 “ sale and delivery of the said stores so sold, or to be sold as
 “ aforesaid.”

† *Sec. 4.* By 9. and 10. Will. 3. c. 41. s. 5. it is further
 enacted, “ That in case any person or persons shall be sued
 “ or prosecuted for or by reason of their discovering or
 “ seizing any such stores or goods so marked as aforesaid,
 “ that in every such case such persons so sued or prosecuted
 “ may plead the general issue, and give this act and the
 “ special matter in evidence: and in case that upon the
 “ trial of such issue the defendants so sued shall make proof,
 “ that such goods or stores, so discovered or seized by them,
 “ were so marked as aforesaid, and that the plaintiffs or
 “ prosecutors in such suit or prosecution shall not at such
 “ trial make good proof that they were so employed, or had
 “ such certificate as aforesaid, before such discovery and
 “ seizure made, and that they did shew the same unto such
 “ defendants before such suit or prosecution commenced or
 “ brought, such defendant shall be acquitted, and found not
 “ guilty thereupon; unless such defendants, upon sight of
 “ such certificate, did not deliver back unto such plaintiffs
 “ or prosecutors, at their request or otherwise, all such
 “ goods and stores so seized, in as good plight and condition
 “ as they were at the time of such certificate shewn; and in
 “ case any such defendants shall be so or otherwise acquitted
 “ on such trial, and that such plaintiffs or prosecutors
 “ shall discontinue such their suit or prosecution, or be
 “ nonsuited therein, such defendants shall recover treble
 “ costs.”

Person sued
 may plead the
 general issue,
 &c.

† *Sec. 5.* By 9. and 10. Will. 3. c. 41. s. 8. it is further
 enacted, “ That nothing in this act contained shall be
 “ King’s stores
 “ may be lent to
 “ any ship in
 “ distress, so they be restored.
 “ con-

“ construed to hinder any the principal officers and com-
 “ missioners of the navy, or any chief commander of any
 “ of his majesty’s ships at sea, to lend any of his majesty’s
 “ stores to any merchant ship or vessel in distress or other-
 “ wise, as might lawfully be done before the making of this
 “ act, in case such goods so lent be restored with all possible
 “ convenience; and provided such person or persons so
 “ borrowing the said stores, from time to time have such
 “ certificate as aforesaid, which the said principal officers
 “ and commissioners of the navy, or commander in chief,
 “ are hereby required to give to the party or parties that
 9. Geo. 1. c. 8. “ shall so borrow the same.” [This made a publick act by
 1. Geo. 1. sess. 2. c. 25. sect. 14.]

The said offi-
 cer empower-
 ed to enquire
 of the imbe-
 zlement of
 naval stores,
 and punish
 the offenders.

+ Sect. 6. By 1. Geo. 1. st. 2. c. 25. s. 3. it is further
 enacted, “ That the said principal officers and commis-
 “ sioners of his majesty’s navy, or any one or more of them,
 “ shall have hereby power to enquire, and by warrant under
 “ his or their hands and seals, to empower any person or
 “ persons to search for the same in all places, in like man-
 “ ner as justices of peace may do in case of felony, and
 “ punish the offenders by such fine and imprisonment, as
 “ aforesaid, the value of the goods so imbezilled or filched
 “ away, not exceeding the sum of twenty shillings, and
 “ cause the goods to be brought in again, and if the offence
 “ be of such nature as doth require an higher and severer
 “ punishment, then that they, any one or more of them,
 “ may commit such offender to the next gaol, or to the
 “ custody of their messenger or messengers aforesaid, till he
 “ or they offending enter into recognizance with surety or
 “ sureties, according to the nature of the offence, to appear
 “ and answer to the same in his majesty’s court of exche-
 “ quer or other court, where his majesty shall question him
 “ or them for the same, within one year following, or pro-
 “ cess duly served for that purpose on such offender or
 “ offenders.”

When the
 goods imbe-
 zled are un-
 der the value
 of twenty shil-
 lings, offender
 shall be fined.

+ Sect. 7. By 1. Geo. 1. st. 2. c. 25. s. 4. it is further
 enacted, “ That the treasurer, comptroller, surveyor, clerk
 “ of the acts, and commissioners of the navy, for the time
 “ being, or any one or more of them, where the goods so
 “ imbezilled, taken, or carried away, shall be under the
 “ value of twenty shillings, shall have full power and
 “ authority, upon the oath of one or more witnesses (which
 “ they or any of them have hereby power to administer),
 “ or confession of such party so offending, as aforesaid, or
 “ other legal proof thereof, to convict the party or parties
 “ so offending, by writing under his or any of their hands
 “ and seals, and to impose such fine or fines upon all or
 “ every

every such person or persons so offending and convicted, as aforesaid, as to the said treasurer, comptroller, surveyor, clerk of the acts, and the commissioners of the navy, for the time being, or any one or more of them, shall in his or their discretion seem meet; the said fine or fines not exceeding double the value of the naval goods, provisions, victuals, stores, or ammunition so imbezilled, or carried away; which fine or fines shall be levied by distress and sale of the goods of such offender, by virtue of the warrant of such officer or officers who shall so convict the said offender, directed in manner aforesaid, to the person or persons aforesaid, returning the overplus, if any be, to the owner of such goods; or in case no sufficient distress can be found, as aforesaid, the party or parties so offending shall, by virtue of the warrant of such officer before whom such person or persons shall be convicted, be imprisoned in the next gaol for any space of time not exceeding three months, without bail or mainprize."

Fine to be levied by distress, and for want thereof imprisonment for three months.

† Sect. 8. By 1. Geo. 1. st. 2. c. 25. s. 5. it is further enacted, "That the said treasurer, comptroller, surveyor, clerk of the acts, and commissioners of the navy for the time being, or any one or more of them, upon oath of one or more credible witnesses (which he and they have hereby power to administer), testifying, That his majesty's naval goods, stores, ammunition, or naval provisions, or any part thereof, are conveyed into any ship or vessel whatsoever, and mentioning the name of such ship or vessel being at anchor, and not ready to sail that tide, within any of the roads, harbours, creeks, or rivers, within his majesty's dominions, or any person or persons by their or one of their warrant or warrants (in which warrant or warrants the quantity or quality of such goods shall be specified), thereunto authorized and appointed in the day-time, shall have full power and authority to go on board any such ship or vessel whatsoever, being within any of the places aforesaid; and in case resistance or refusal be made upon demand, to enter and break open the hatches and cabins, or other places of such ship or vessel, and search therein for any such naval goods, stores, ammunition, or provisions belonging to his majesty's navy, which have been imbezilled, purloined, and taken away; and the same to seize, take, and carry away to any of his majesty's yards or storehouses, to be applied to his majesty's use, unless the said officers and commissioners, upon hearing the matter, shall find they were unduly seized, and thereupon restore them to the party claiming the same, which they are hereby empowered to do."

Naval stores imbezilled and put on shipboard shall be seized by warrant of the said treasurer, &c.

† *Stat. 9.* By 9. Geo. 1. c. 8. f. 3. which recites the two statutes above-mentioned, it is enacted, “That if any person or persons shall be lawfully convicted of having in his, her, or their custody, any timber, thick stuff, or plank, marked with the broad arrow, by stamp, brand, or otherwise, or of concealing any timber, thick stuff, or plank so marked, every such person so offending shall suffer, forfeit, and pay, as for having, keeping, or concealing any other warlike, naval, or ordnance stores contrary to the said act.”

† *Stat. 10.* By 9. Geo. 1. c. 8. f. 4. it is further enacted, “That it shall and may be lawful to and for any judge, justice or justices, before whom any offender or offenders shall be convicted of any of the crimes or offences before recited, enacted, or mentioned in this act, to mitigate the penalty for the same, as he or they shall see cause, and to commit the offender or offenders to be convicted to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize until payment be made of the penalty and forfeiture imposed by this or the said former act, or mitigated as aforesaid, or to punish such offender or offenders corporally, by causing him, her, or them to be publicly whipped, or committed to some publick workhouse, there to be kept to hard labour for the space of six months, or a less time, as to such judge, justice, or justices, in his or their discretion shall seem meet; any thing in the said recited act, or in any other act, to the contrary notwithstanding.”

† *Stat. 11.* By 9. Geo. 1. c. 8. f. 5. it is further enacted, “That where any dispute shall arise between the persons upon whose informations or oaths any person or persons offending in the premises, or against the said former act, shall be prosecuted and convicted, touching any right or title to any of the forfeitures or penalties before-mentioned, or any part thereof, the judge, justice, or justices before whom such offender or offenders shall be convicted, shall examine the matter, and finally determine the same.”

Justices of
assize or quar-
ter sessions
may try of-
fences relating
to the stores,
&c.

† *Stat. 12.* By 17. Geo. 2. c. 40. f. 10. for explaining and amending the said statutes of 9. and 10. Will. 3. c. 41. and 9. Geo. 1. c. 8. it is enacted, “That it shall and may be lawful to and for any judge, justice, or justices at the assizes, or justices of the peace at the general quarter-sessions to be holden for any county, city, borough, or town corporate, to hear, try, and determine, by indictment

“ment or otherwise, all or any the crimes or offences mentioned in the said recited acts; and that the said judge, justice, or justices of assize, or justices of peace as aforesaid, before whom such offender or offenders shall be indicted, or tried and convicted of all or any the crimes or offences in the said recited acts mentioned, may impose any fine, not exceeding the sum of two hundred pounds, on such offender or offenders; one moiety to be paid to his majesty, and the other moiety to the informer; and may mitigate the said penalty and forfeitures inflicted by the said recited acts, or either of them, and to commit the offender or offenders so convicted and fined to the common gaol of the county or place where the offence shall be committed; there to remain without bail or mainprize until payment be made of the penalty and forfeitures imposed by this or the said former acts, or mitigated as aforesaid; or in lieu thereof, to punish such offender or offenders in the premises corporally, by causing him, her, or them to be publickly whipped, and committed to some house of correction or publick workhouse, there to be kept to hard labour for the space of three months, or less time, as to such judge, justice, or justices of assize, or justices of the peace, shall in his or their discretion seem meet; any thing in the said recited acts, or in any other act, to the contrary notwithstanding.”

† *Sec. 13.* By 9. Geo. 3. c. 30. f. 5. for the more speedy and effectual bringing to justice persons who shall be guilty of stealing or embezzling his majesty's naval stores, IT IS ENACTED, “That it shall and may be lawful to and for the treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy for the time being, and they are hereby respectively authorized and empowered, from time to time, in all places whatsoever, to do, perform, exercise, and execute, the office and duty of a justice or justices of the peace, to all intents and purposes whatsoever, in causing any person or persons who shall, at any time or times, be charged with stealing or embezzling any naval stores, the property of his majesty, his heirs, or successors, to be apprehended, committed, and prosecuted, for the same; and all constables, headboroughs, keepers of gaols and prisons, and all other officers whatsoever, shall, and they are hereby respectively required, from time to time, diligently to execute, perform, and obey, all such warrant and warrants as shall be made, directed, issued, or given to them, or any of them, by any one or more of the persons aforesaid, touching any of the matters and things hereinbefore contained.”

Treasurer, and other officers of the navy, empowered to act as justices in any of the cases here mentioned.

Rex v. Blackman at nisi prius, Hilary Term, 34. Geo. 3 † *Sec.* 14. It is said, that if a peace-officer, who in searching for other goods discovers naval stores, and an information is filed in pursuance of such discovery from him, he is to be deemed the informer within the meaning of the statute 17. Geo. 2. c. 4. s. 10.

Rex v. Blackman. † *Sec.* 15. It is said also, that although the statute 17. Geo. 2. c. 40. leaves an option in the Judge either to inflict corporal punishment or impose a fine, the expectation of a share of such fine will render a witness incompetent on an information founded on 9. and 10. Will. 3. c. 41.

Rex v. Innell and Another, Kent. Lent Assizes, 1793, coram HOTHAM, Baron. † *Sec.* 16. It is also said, that the commissioners of the navy cannot grant a warrant of commitment against any person for having naval stores in his custody, contrary to 9. and 10. Will. 3. c. 41. until an indictment has been preferred and found against such offender.

Willis's case, Hicks's Hall, Oct. Sessions, 1791. † *Sec.* 17. It seems also agreed, that although the indictment state that the prisoner "then or at any time before, not being a contractor with or authorized by the principal officers or commissioners of our said lord the king, of the navy, ordnance, or victuallers or victualling-office, for the use of our said lord the king, to make any stores of war, &c." yet that it is not incumbent on the prosecutors to prove this *negative averment*, but that it is incumbent on the defendant to shew, if the truth be so, that he is within the exception in the statute.

CHAPTER THE NINETIETH.

OF EXERCISING A TRADE

WITHOUT HAVING SERVED

AS AN APPRENTICE.

† *Sect. 1.* **BY** 5. Eliz. c. 4. f. 31. it is enacted, “ That None may use
 “ it shall not be lawful to any person or any manual
 “ persons, other than such as now do lawfully use or exer- occupation
 “ cise any art, mystery, or manual occupation, to set up, except he hath
 “ occupy, use, or exercise any craft, mystery, or occupation, been appren-
 “ now used or occupied within the realm of *England* or tice to the
 “ *Wales*; except he shall have been brought up therein same, &c.
 “ seven years at the least as an apprentice, in manner and 31. Eliz. c. 5.
 “ form above said; nor to set any person on work in such 22. Geo. 2. c. 41.
 “ mystery, art, or occupation, being not a workman at this 3. Bulstr 179.
 “ day; except he shall have been apprentice as is afore said: 1. Roll. 10.
 “ or else having served as an apprentice as is afore said, shall 2. Roll 391.
 “ or will become a journeyman, or be hired by the year; Stiles 23. 383.
 “ upon pain that every person willingly offending, or Distillers ex-
 “ doing the contrary, shall forfeit and lose for every default empted by
 “ forty shillings for every month.” 12. Annæ,
f. 1.

1. Lutw. 164.
1. Lev. 87.
 2. Lev. 206. 8. Co. 129. 11. Co. 54. Cro. El. 737. Cro. Jac. 85. 178. 538. Cro.
 Car. 316. 347. 499. 516. Hob. 211. 183. Noy 5. 1. Vent. 8. 51. 142. 174. 326.
 346. 364. 3. Keb. 810. 813. 1. Mod. 26. 2. Mod. 216. 3. Mod. 313. 2. Ld. Ray.
 1188. 1248. Sec 1. Burr. 5. 251. 389. 2. Burr. 1036. 4. Burr. 2449. 2. Will. 40.

† *Sect. 2.* By 15. Car. 2. c. 15. “ Hemp-workers of all
 “ kinds, net-makers, and makers of tapestry-hangings, are
 “ excepted; who may set up without having served seven
 “ years.”

† *Sect. 3.* By 3. Geo. 3. c. 8. “ All officers, mariners,
 “ and soldiers, who have been employed in his majesty’s
 “ service, and not deserted, may exercise such trades as
 “ they are apt for, in any town or place.”

† *Sect.*

† *Sec. 4.* By 17. Geo. 3. c. 33. "With respect to the counties of *Middlesex, Essex, Surrey, and Kent*, for want of a sufficient number of persons who have served apprenticeships to the trade of a *dyer*, it shall be lawful for any person exercising that trade within any of the said counties, to employ such number of journeymen, servants, and labourers, as he shall have occasion for, without incurring any penalty."

Farren qui tam v. Williams, 1. Williams, 369. † *Sec. 5.* It is decided, that an information *qui tam* may be brought at the quarter-sessions upon this statute.

Ball qui tam v. Cobus, 1. Burr. 367. † *Sec. 6.* It is also decided, that although the statute mentions only "city, market-town, or corporation," yet an information *qui tam* for exercising a trade at the *parish* of *A.* in such a county, &c. is good.

Bull. N. P. 192. † *Sec. 7.* It also seems, that the above statutes restrain persons from carrying on trades in country *villages* unless they have served as apprentices to such trade; but it is said to be the practice to find for the defendant, if it appear that the trade was carried on in a small village.

3. Co. 129. † *Sec. 8.* It seems also agreed, that it restrains unqualified persons from using any trade carried on at the time of passing, or which is mentioned in the third section of the statute; as the trade of a draper (*a*), an ironmonger (*b*), soap-maker (*c*), cutler (*d*), brewer (*e*), baker (*f*), taylor (*g*), upholsterer (*h*), point-maker (*i*), spurrier (*k*), tyler (*l*), tell-monger (*m*), tanner (*n*), barber (*o*), cook (*p*).
a Hard. 54. *b* Stiles 223. *c* Cro. Car. 316. *d* 2. Keb. 403. *e* Palm. 543. *f* Cro. Jac. 178. *g* 2. Roll. 376. *h* 1. Lev. 243. *i* 2. Salk. 611. *j* Cro. Car. 516. *k* Cro. Jac. 179. *l* 4. Mod. 145. *m* 2. Salk. 611. *n* 2. Burr. 1035. *o* 1. Lev. 87. *p* 3. Co. 129.

(*q*) 1. Saund. 311. † *Sec. 9.* It seems also, that a person having the freedom of a city does not release him from the restraint of this statute (*q*); nor his being an alien or denizen (*r*), or having served as an apprentice to another trade (*s*), or even to the widow of a qualified trader, unless she assisted her husband seven years (*t*).
r Hutton 132. *s* Show. 266. *t* Noy 5. Carth. 163.

Hobbs v. Young, 2. Salk. 610. † *Sec. 10.* It is also decided, that an unqualified master cannot carry on a trade by means of qualified journeymen; for the intent of the statute is to annex the benefit of trade to such as have undergone the hardship of learning it, and few would take the trouble of being apprentices if they might employ others to work for them.

† *Sec.*

† *Sect. 11.* But it is said that this statute does not extend to trades where no skill is required. 2 Bulst. 190. Salk. 611.

1. Ve. 326.
2. Lev. 130. Cro. Car. 499.

† *Sect. 12.* It is also decided, that a person who works at a trade as a *journeyman* is not liable to the penalties of this statute, although he is not qualified to set up in it. Beach v. Turn r. 4. Burr. 2449.

† *Sect. 13.* It is certain also that a man may brew, bake, or use any other lawful trade or manual occupation for the use of himself or his family, and may employ servants skillful therein, but he cannot sell for mere or gain, or retain an apprentice therein. 8. Co. 129.

† *Sect. 14.* It is also decided, that a qualified master may take a partner who has not served as an apprentice to the trade, provided the partner only share in the profits thereof, and do not actually exercise the trade himself. Reynard v. Chace, 1. Burr. 2.

† *Sect. 15.* It is also decided, that if a person has exercised and followed any trade as a master, or hath followed two or more different trades without interruption or impediment for the term of seven years, he is not liable to be prosecuted on this statute. 2. Willf. 168. Bl. Rep. 233.

† *Sect. 16.* It hath also been decided, that serving as an apprentice at any place, whether in *England*, in *Wales*, or any other place, is sufficient. 1. Salk. 67.

CHAPTER THE NINETY-FIRST.

OF DOG STEALING.

† *Sect. 1.* **BY** 10. Geo. 3. c. 18. f. 1. it is enacted, “ That
 “ if any person shall steal any dog or dogs,
 “ of any kind or sort whatsoever, from the owner or owners
 “ thereof, or from any person or persons intrusted by the
 “ owner or owners thereof with such dog or dogs; or shall
 “ sell, buy, receive, harbour, detain, or keep any dog or
 “ dogs of any kind or sort whatsoever, knowing the same
 “ to have been stolen as aforesaid, every such person, upon
 “ being convicted thereof upon the oath of one or more
 “ credible witness or witnesses, or by his or her own con-
 “ fession, before any two or more justices of the peace for
 “ any county, riding, division, or place, shall, for the first
 “ offence, forfeit and pay such sum of money, not exceed-
 “ ing thirty pounds, nor less than twenty pounds, as to such
 “ justices shall seem meet, together with the charges previous
 “ to, and attending such conviction, to be ascertained by
 “ such justice before whom such offender shall be convicted:
 “ and in case such penalty shall not be forthwith paid, such
 “ justices shall commit the offender to the common gaol or
 “ house of correction, there to remain without bail or
 “ mainprize for any time not exceeding twelve calendar
 “ months, nor less than six calendar months, or until the
 “ penalty and charges shall be paid: and if any person,
 “ having been convicted as aforesaid, shall afterwards be
 “ guilty of the like offence, and shall be thereof convicted
 “ in like manner as aforesaid, every such person shall, for
 “ every such offence, forfeit and pay such sum of money,
 “ not exceeding fifty pounds, nor less than thirty pounds,
 “ as to such justices shall seem meet, together with the
 “ charges previous to, and attending such conviction, to be
 “ ascertained by such justices before whom such offender
 “ or offenders shall be so convicted: which said penalties,
 “ or any of them, when recovered, shall be paid, one
 “ moiety thereof to the informer, and the other moiety
 “ to the poor of the parish where the offence shall be com-
 “ mitted; and, upon nonpayment thereof, such justices
 “ shall commit the offender to the common gaol or house

First offence
to forfeit not
less than
twenty
pounds, &c.

Subsequent
offence to for-
feit not less
than thirty
pounds, &c.

“ quarter-session of the peace, to be held for the county or
 “ place wherein the cause of complaint shall arise, and
 “ within four days after the cause of such complaint shall
 “ have arisen; such appellant giving, or causing to be
 “ given, fourteen days notice at least, in writing, of his or
 “ her intention to bring such appeal, and of the matter
 “ thereof, to the persons whose acts are complained against;
 “ and, within two days after such notice, entering into a
 “ recognizance before some justice of the peace for such
 “ county or place, with two sufficient sureties, conditioned
 “ to try such appeal, and abide the order of, and to pay such
 “ costs as shall be awarded by, the justices at such quarter-
 “ session: and the said justices at such session, upon due
 “ proof of such notice being given as aforesaid, and of the
 “ entering into such recognizance, shall hear and finally
 “ determine the causes and matters of such appeal in a
 “ summary way, and award such costs to the parties appeal-
 “ ing, or appealed against, as they the said justices shall
 “ think proper, and the determination of such quarter-
 “ sessions shall be final, binding, and conclusive, to all
 “ intents and purposes; and no order made concerning
 “ any of the matters aforesaid, or any other proceedings
 “ to be had, touching the conviction or convictions of any
 “ offender against this act, shall be quashed for want of
 “ form, or be removed by *certiorari* or any other writ or
 “ process whatsoever, into any of his majesty’s courts of
 “ record at *Westminster*. ”

† *Sect. 5.* It is said, that in an information on this Add. P. S.
 statute it is indispensably necessary to describe the particular ^{221.}
 kind of dog which is alledged to have been stolen.

† *Sect. 6.* It is also doubted whether, from the inaccurate manner in which this statute is worded, it would be
 penal to steal a bitch. ^{vice.}

CHAPTER THE NINETY-SECOND. .

OF GAMING.

GAMING is permitted in *England* upon every possible subject, except where it is accompanied with circumstances repugnant to *morality* or *public policy*; or where, as in certain special cases, it is restrained by positive statutes. Dalton c. 46. Cowper 37. 730. 4. Comm. 169. 2. Vernon 71. 2. Ventris 175. 2. Bac. Abr. 619.

I shall therefore endeavour to shew how far gaming is permitted or condemned by the common law, and in what cases it is restrained by statute, under the following heads:

1. Wagers or bets.
2. Keeping a common gaming-house.
3. Excessive gaming.
4. Horse-races.
5. Pretended lotteries.
6. Foreign lotteries.
7. Insurances.
8. Stockjobbing.

And first as to WAGERS OR BETS.

+ *Sect. I.* A wager or bet is a contract entered into, without colour or fraud, between two or more persons, for a good consideration, and upon mutual promises to pay a stipulated sum of money, or to deliver some other thing, to each other, according as some prefixed and equally uncertain contingency shall happen within the terms upon which the contract is made. 2. Ventris 175. Ld. Ray. 1035. 6. Mod. 129. Cowper 38.

And upon this species of gaming the following points appear to have been resolved :

Andrews v.
Horne, 1. Lev.
33.

See Grumbals
v. Aucher,
1. Sid. 314.

† Sect. 2. That a promise, in consideration of twenty shillings, to repay twenty pounds *si Carolus Stuartus foret rex Angliæ infra duodecim menses tunc prox' sequent'* is good, notwithstanding *Charles Stuart* was in fact king of England at the very time, and therefore no contingency which could happen within the terms of the contract; for the Court held that the contract should be construed according to the circumstances; and as the king was then out of possession, they determined the real contingency to be, "if *Charles Stuart* should be king of England in possession within the twelve months."

Vide the Case
of Jones v.
Da Costa,
Cowper, 749
to 736.

† Sect. 3. That wagers which tend to violate the peace of society, by exhibiting a third person, who is innocent, in a ridiculous and contemptible light to all the world, and to break in upon his private comfort and peace of mind, are illegal and void; as where two indifferent persons bet upon the sex of a third person; or that such a woman has committed adultery; or that an unmarried woman has had a bastard; or that a certain character is an *hermaphrodite*; or that he has any disgraceful disease upon him; or that a woman has a mark or defect upon some concealed part of her body; in all such cases the law will not permit the peace of society to be disturbed, or the feelings of the individual to be injured, by the voluntary transactions of other persons; and the party likely to be injured or exposed by them, or whose interest such wagers affect, may apply to the court of king's bench to put a stop to proceedings so disgraceful and improper.

Cowper 39.

† Sect. 4. That wagers also which conduce to the commission of any criminal act are illegal and void; as where a wager is laid that one man shall beat another; for it is an incitement to a breach of the peace.

Cowp. 19.

† Sect. 5. That all wagers which are an incitement to immorality, or which are made upon a subject *contra bonos mores*, are void, for the law of England prohibits every thing which is made *contra bonos mores*; as for instance, the violation of female chastity, where a man lays a wager that he will seduce such a woman, or where, as in *Sir Charles Sedley's* case, the wager tends to provoke a man to expose himself naked in a public balcony.

† Sect. 6. And although the indecency of evidence is no objection to the admissibility of it, provided it be relevant and

and necessary to the cause in which it is introduced; yet it has been said by very high authority (a), that if a wager be laid of such a nature as to require a medium of proof which must unavoidably be indecent, the necessity of such indecent evidence would be a material ground for declaring the wager illegal and *contra bonos mores*:—as suppose two persons were to lay a wager upon a mark or defect in a woman's body; the Court would hardly suffer her chambermaid to be called to give evidence upon such a question. So where a wager is made upon the sex of a person, who, to the appearance of all the world, is a man (b), but who, for reasons of his own, thinks proper to keep his sex a secret; the medium of proof upon such a question must arise from the circumstances that distinguish the sexes; and necessarily tends to introduce all the indecent evidence such an enquiry can involve.

(a) Ld. Mansfield, Cowper 736.

(b) This was a policy upon the sex of the Chevalier D'Lon.

† Sect. 7. But many contracts which are not against the principles of morality, or public decency are still void, as against the maxims of *sound policy* (c); and therefore all wagers which in their nature tend to encourage evil and corrupt practices, repugnant to the principles of justice and equity, and detrimental to the public good, are illegal and void (d); as if a wager were laid with a judge upon the event of a cause depending before him; or even with one of the lords upon the event of an appeal, on which the house is to decide; for it is not only highly essential that the course of justice should flow from sources in reality clear and unpolluted, but that the public mind should be as free from suspicion as the stream itself should be from the appearance of taint or corruption (e); and in this spirit it is said (f), that a wager with either the attorney or the counsel upon the event of a suit in which they are concerned, would, on that account, be liable to objection.

(c) Ld. Mansfield, Cowper 39.

(d) 1. Term Rep. 60.

(e) 1. Term Rep. 60.

(f) Ld. Mansfield, Cowper 40.

† Sect. 8. So also a wager colourably made as a cover to conceal usury, or any other illegal practice, is void; and the moment the truth of the transaction appears, it would remain to be governed by principles, as if the parties had really and openly entered into such a corrupt agreement. Thus also in evasions of simony, where a person who wanted to be made a bishop, conversing with the person who had most interest at court upon the subject of a see that was then vacant, said, "I will bet you so much," naming a considerable sum, "that I have not the bishop-rick;" this was a mere colour to disguise what was the real intention of the party, for the real intention was to purchase it; and the contract being clearly and manifestly corrupt, it was therefore void.

Cowper 39.

Allen v. Herne, Durnford and East's Reports, p. 56. Mich. Term, 26. Geo. 3. † *Sec. 9.* And upon the principle of corruption, it has been determined, that a wager between opposite voters at an election for members of parliament, made before the poll began, upon the event of the election, is a void contract; because in the eye of the law it is corrupt, and against the fundamental principles of the constitution. It is a pecuniary influence upon the exercise of a franchise, which, from its nature and use, should be free and unbiassed to the last moment of its existence.

† *Sec. 10.* And in a wager upon the event of an election for *Bristol* (a), LORD MANSFIELD, immediately upon opening the case, nonsuited the assignee of the winner, who was the plaintiff, upon the ground that it was a colour for bribery and corruption, although it did not appear whether the parties were voters or not. And it is clear (b), that a wager between a voter and another person who is not one, is a palpable bribe; it is a sum of money laid to procure a particular vote.

(a) *Jones, assignee of Knight, v. Parry.*
(b) *Per Buller J. in the Case of Allen v. Herne* *supra*.

† *Sec. 11.* But it does not seem to be settled how far a wager "that war would be declared against *France* within "three months" is or is not illegal. A policy of insurance was opened upon this event, and the opinion of the twelve judges was taken upon the point, whether the wager was void under the 14. Geo. 3. c. 47.; the courts of king's bench and common pleas were of opinion that it was void by the statute; the court of exchequer was of a contrary opinion; and no judgment was ever given on the case.

Foster v. Trenchard, King's Bench, Trin. Term, 21. Geo. 3.

† *Sec. 12.* It is however determined, that a wager fairly laid, without fraud or colour, between parties litigating in equity upon the event "Whether a decree of the court of chancery would be reversed on appeal to the house of lords," is legal? The contract is equal between the parties; for whether the house of lords would be of the same or a different opinion with the chancellor, is a future event equally uncertain, and of which each of them have equal knowledge or equal ignorance. It is neither immoral nor contrary to the dictates of justice, or the principles of sound policy, or the decencies of public manners. And under these circumstances, when a nice question is depending, on which even persons in the profession may differ, either they or any two other persons may lawfully bet about the decision (c).

(c) *Per Lord Mansfield.*

† *Sec. 13.* So also a fair wager laid at *Newmarket*, without either warranty or exception, by two young heirs upon the

The Case of Lord March v. Pigot, 5. Burrow 2802.

the lives of their respective fathers, has been adjudged good, notwithstanding one of their fathers was actually dead at the time the bet was laid; for that event could not have been known to the parties; and the material contingency was, which of them should first inherit the patrimony. Nor is this wager such as injures or affects the individuals who are made the subject of it (a); the reproach, if any, falls upon the parties themselves who made it.

(a) Cowper
733. 736.

As to THE SECOND POINT, viz. The offence of keeping and frequenting a common gaming-house.

† *Stat.* 14. By 33. Hen. 8. c. 9. s. 11. it is enacted, "That no manner of person or persons, of what degree, quality, or condition soever he or they be, from the Feast of the Nativity of St. *John Baptist* new next coming, by himself, factor, deputy, servant, or other person, shall for his or their gain, lucre, or living, keep, have, hold, occupy, exercise, or maintain, any common house, alley, or place of bowling, coyting, cloysh-cayls, half-bowl, tennis, dicing-table, or carding, or any other manner of game prohibited by any estatute heretofore made, or any unlawful new game now invented or made, or any other new unlawful game hereafter to be invented, found, had, or made, upon pain to forfeit and pay for every day keeping, having, or maintaining, or suffering any such game to be had, kept, executed, played, or maintained within any such house, garden, alley, or other place, contrary to the form and effect of this estatute, forty shillings."

The penalty for maintenance of a house for unlawful games.

† *Stat.* 15. By 33. Hen. 8. c. 9. s. 12. "And also every person using and haunting any of the said houses and plays, and there playing, to forfeit for every time so doing, six shillings eight-pence."

The penalty for resorting to a house of unlawful games.

† *Stat.* 16. By 33. Hen. 8. c. 9. s. 14. it is further enacted, "That it shall be lawful to all and every the justices of peace in every shire, mayors, sheriffs, bailiffs, and other head officers within every city, town, and borough within this realm, from time to time, as well within liberties as without, as need and case shall require, to come, enter, and resort into, all and every houses, places, and alleys where such games shall be suspected to be holden, exercised, used, or occupied, contrary to the form of this estatute: and as well the keepers of the same, as also the persons there haunting, resorting, and playing, to take, arrest, and imprison, and therein so taken and arrested to keep in prison unto such time as"

Magistrates may repress unlawful games and punish offenders.

Further provisions relating hereto, 2. Geo. 2 c. 28, s. 9.

“ time as the keepers and maintainers of the said plays
 “ and games have found sureties to the king’s use, to be
 “ bound by recognizance or otherwise, no longer to use,
 “ keep, or occupy any such house, play, game, alley, or
 “ place; and also that the persons there so found, be in
 “ like case bound by themselves, or else with sureties, by
 “ the discretions of the justices, mayors, sheriffs, bailiffs,
 “ or other head officers, no more to play, haunt, or exer-
 “ cise from thenceforth, in, at, or to any of the said places,
 “ or at any of the said games.”

Searching of
 houses where
 unlawful
 games be kept.

† *Stat.* 17. By 33. Hen. 8. c. 9. f. 15. it is further
 enacted, “ That the mayors, sheriffs, bailiffs, constables,
 “ and other head officers within every city, borough, and
 “ town within this realm, where any such officers shall for-
 “ tune to be, as well within the franchises as without,
 “ shall make due search weekly, or at the farthest at all
 “ times hereafter once every month, in all places where
 “ any such houses, alleys, plays, or places shall be suspected
 “ to be had, kept, and maintained; and if the said mayors,
 “ sheriffs, bailiffs, constables, and other head officers with-
 “ in their cities, boroughs, and towns, as well within fran-
 “ chises as without, do not make due search at the farthest
 “ once every month, if the case so require, according to
 “ the tenor of this act, and do not execute the same in all
 “ things according to the purport and force of the same;
 “ that then every such mayor, sheriff, bailiff, constable,
 “ or other head officer, to pay and forfeit for every month
 “ not making such search, nor executing the same, forty
 “ shillings.”

Persons pro-
 hibited to play
 at unlawful
 games out of
Christmas.
 1. Latw. 133.

† *Stat.* 18. By 33. Hen. 8. c. 9. f. 16. it is enacted,
 “ That no manner of artificer or craftsman of any handi-
 “ craft or occupation, husbandman, apprentice, labourer,
 “ servant at husbandry, journeyman, or servant of arti-
 “ ficer, mariners, fishermen, watermen, or any serving
 “ man, shall from the said Feast of the Nativity of St. John
 “ Baptist, play at the tables, tennis, dice, cards, bowls,
 “ claff, coyting, logating, or any other unlawful game,
 “ out of *Christmas*, under the pain of twenty shillings to
 “ be forfeit for every time; and in *Christmas* to play at
 “ any of the said games in their masters houses, or in their
 “ masters presence; and also that no manner of persons
 “ shall at any time play at any bowl or bowls in open places
 “ out of his garden or orchard, upon the pain for every
 “ time so offending to forfeit six shillings eight-pence;
 “ and that all justices of peace, mayors, bailiffs, sheriffs,
 “ and all other head officers, and every of them, finding
 “ or knowing any manner of person or persons using or
 “ exer-

Playing at
 bowls. Cer-
 tain officers
 may commit
 offenders to
 prison.

“ exercising any unlawful games, contrary to this present
 “ statute, shall have full power and authority to commit
 “ every such offender to ward, there to remain without bail
 “ or mainprize, until such time that they so offending be
 “ bounden by obligation to the king’s use, in such sums of
 “ money as by the discretions of the said justices, mayors,
 “ bailiffs, or other head officers, shall be thought reason-
 “ able, that they or any of them shall not from henceforth
 “ use such unlawful games.”

† *Stat. 19.* By 33. Hen. 8. c. 9. f. 18. it is enacted, Within what
 “ That where any such forfeitures shall happen to be found time any suit
 “ within the precinct of any franchise, leet, or lawday, then shall be pro-
 “ the lord of the same franchise, leet, or lawday, to have the secuted upon
 “ one moiety thereof, and the other moiety thereof to any of this statute,
 “ the king’s subjects that will sue for the same in any of the and who shall
 “ king’s courts, by action, information, bill, or otherwise, in have the for-
 “ which action or suit the defendant shall not be admitted to feitures.
 “ wage his law, nor any protection nor essoin shall be allow-
 “ ed; and where such forfeiture shall be found out of the
 “ precinct of any franchise, leet, or lawday, that the moiety of
 “ all such forfeitures shall be to the king our sovereign lord,
 “ and the other moiety thereof to any the king’s subjects
 “ that will sue for the same, by bill, plaint, action, informa-
 “ tion, or otherwise, in any of the king’s courts, in which
 “ suit or action the defendant shall not be admitted to wage
 “ his law, nor any protection or essoin shall be allowed.”

† *Stat. 20.* But by 33. Hen. 8. c. 9. f. 21. it is provided, Leases of
 “ That if any person or persons have taken by lease, whe- houses where
 “ ther it be by word, writing, or otherwise, any house, al- unlawful
 “ ley, or place, wherein any such unlawful game now is, games be used.
 “ and at the time of such lease made, was used, that then
 “ every such lessee shall, at the liberty of him or them to
 “ whom such lease is made, their executors, administrators,
 “ or assigns, from the said Feast of the Nativity of St. *John*
 “ *Baptist*, be utterly void, except it be for breach of cove-
 “ nants or agreements, or payment of rent due or to be due
 “ at the said Feast, or any time before, so that then at the
 “ same Feast, or within one month next after the same, the
 “ said lessee give knowledge to such lessor or lessors, their
 “ heirs and assigns, that he will no longer occupy the same,
 “ and that then it shall be lawful to the inheritor, lessor,
 “ or owner thereof, or to his heirs and assigns, in the same
 “ house, alley, or place, to re-enter.”

† *Stat. 21.* By 33. Hen. 8. c. 9. f. 22. it is also provided, The servant
 “ That it shall be lawful for every matter to license his by licence may
 “ or their servants to play at cards, dice, or tables with their play with his
 “ said master.

“ said master, or with any other gentleman repairing to
 “ their said master, openly in his or their house, or in his
 “ or their presence, according to his or their discretion;
 “ and that it shall be lawful to every such servant, for every
 “ time so being commanded or licensed by his said master,
 “ as is aforesaid, to play at cards, dice, or tables with
 “ his said master, or other gentlemen so to him repair-
 “ ing; any thing in this act to the contrary notwithstanding.”

In what cases
 servants may
 play at dice,
 cards, tables,
 bowls, or ten-
 nis.

+ *Sect. 22.* By 33. Hen. 8. c. 9. f. 23. it is also provided,
 “ That it shall be lawful to every nobleman and other hav-
 “ ing manors, lands, tenements, or other yearly profits,
 “ for term of life in his own right, or in his wife’s right,
 “ to the yearly value of an hundred pounds or above, to
 “ command, appoint, or licence, by his or their discretion,
 “ his or their servants, or family of his or their house or
 “ houses, for to play within the precinct of his or their
 “ houses, gardens, or orchards, at cards, dice, tables,
 “ bowls or tennis, as well among themselves as other re-
 “ pairing to the same house or houses; and that they so
 “ playing by commandment, appointment, or licence, as
 “ is aforesaid, shall not incur any danger or penalty con-
 “ tained in this act for the same; this act or any thing
 “ therein contained to the contrary thereof in any wise not-
 “ withstanding.”

Certain of-
 fences punish-
 able only at
 the assizes,
 quarter-ses-
 sions, or in a
 lect.
*Raym. 144.
 2. Mod. 246.*

+ *Sect. 23.* By 31. Eliz. c. 5. f. 7. it is enacted, “ That
 “ all suits to be pursued upon any statute for using any
 “ unlawful game, or for not using any lawful game, shall
 “ be sued and prosecuted in the general quarter-sessions of
 “ the peace, or assizes, of the same county where the offence
 “ shall be committed, or otherwise enquired of, heard, and
 “ determined in the assizes or general quarter-sessions of the
 “ peace of the same county where such offence shall be
 “ committed, or in the lect within which it shall happen,
 “ and not in any wise out of the same county where such
 “ offence shall happen or be committed.”

33. Hen. 8. c.
 9. against un-
 lawful games,
 made more ef-
 fectual.

+ *Sect. 24.* By 2. Geo. 2. c. 28. f. 9. which recites,
 “ That by the statute 33. Hen. 8. c. 9. no power is given
 “ unto the justices of the peace to demand and take from per-
 “ sons found playing contrary to law, any other security than
 “ their own recognizances, that they or any of them shall
 “ not from thenceforth use such unlawful games, unless such
 “ persons are so found playing contrary to law upon the
 “ view of one or more justice or justices of the peace:”
 it is further enacted, “ That where it shall be proved
 “ upon

“ upon the oath of two or more credible witnesses, before
 “ any justice or justices of the peace, as well as where
 “ such justice or justices shall find, upon his or their own
 “ view, that any person or persons have or hath used or ex-
 “ ercised any unlawful game contrary to the said statute,
 “ the said justice or justices shall have full power and au-
 “ thority to commit all and every such offender and of-
 “ fenders to prison, without bail or mainprize, unless and
 “ until such offender and offenders shall enter into one or
 “ more recognizance or recognizances, with sureties or
 “ without, at the discretion of the said justice or justices
 “ of the peace, that he or they respectively shall not from
 “ thenceforth play at or use such unlawful game.”

† *Sect. 25.* By 18. Geo. 2. c. 34. f. 1. it is recited, No person
 “ That whereas, notwithstanding the many good and shall keep a
 “ wholesome laws now in being for preventing excessive and place for play-
 “ deceitful gaming, many persons of ill fame and reputation, ing roly-poly,
 “ who have no visible means of subsistence, do keep houses, or other game
 “ rooms, and other places for playing, and do permit per- with cards or
 “ sons therein to play at cards, dice, and other devices, for dice.
 “ large sums of money, by means whereof divers young and
 “ unwary persons, and others, are drawn in to lose the great-
 “ est part, and sometimes all their substance; and it frequent-
 “ ly happens they are thereby reduced to the utmost neces-
 “ sities, and betake themselves to the most wicked courses,
 “ which end in their utter ruin: and whereas a certain per-
 “ nicious game called roulette, or roly-poly, is daily practised,
 “ and the laws now in being have, by experience, been found
 “ ineffectual to put a stop to such pernicious practices:” and
 “ therefore enacted, “ That no person or persons, of what
 “ condition soever, shall keep any house, room, or place
 “ for playing, or permit or suffer any person or persons
 “ whatsoever, within any such house, room, or place, to
 “ play at the said game of roulette, otherwise roly-poly, or
 “ at any other game, with cards or dice, already prohibited
 “ by the laws of this realm; and in case any person or per-
 “ sons whatsoever shall keep any such house, room, or
 “ place for playing, or permit or suffer any person or per-
 “ sons as aforesaid to play at the said game of roulette, other-
 “ wise roly-poly, or at any other game, with cards or
 “ dice already prohibited by law, such person or persons
 “ so offending shall incur the pains and penalties, and be
 “ liable to such prosecution as is directed in and by the
 “ statute 12. Geo. 2. c. 28.”

† *Sect. 26.* By 18. Geo. 2. c. 34. f. 7. it is enacted, No privilege
 “ That no privilege of parliament shall be allowed to any of parliament,
 “ person or persons whatsoever against whom any prosecu- &c.
 “ tion

"tion or proceedings shall be commenced or had, for
 "keeping of any public or common gaming-house, or any
 "house, room, or place for playing at any game or games
 "prohibited by this or any other act now in being against
 "excessive or deceitful gaming, any law, usage, or custom
 "to the contrary in any wise notwithstanding."

Dalton c. 46.

† *Sect.* 27. It is said, that the above statutes do not extend to persons who occasionally game in a *tavern*, or in an *inn*, nor to persons who play at bowls in a skittle-ground *for their recreation*, or the like, if the house or place be not kept for the known, avowed, and common purposes of gaming.

Rex v. Clarke,
Cowp. 35.

† *Sect.* 28. And a conviction on 33. Hen. 8. c. 9. for playing at bowls and pins called *bubyssing*, was quashed, because the information did not alledge that the playing was in *one* of the defendant's *own* orchards, for it is only unlawful *sub mod.*

Rex v. Howell,
3. Keb. 510.

† *Sect.* 29. But it seems, that the keeping of a *cockpit* is not only an indictable offence at common law, but is considered as a gaming-house within the statute 33. Hen. 8. c. 9. and therefore on a conviction on an indictment at common law, the Court will measure the fine by inflicting *forty shillings* for each day, according to the number of days such cockpit was kept open.

Rex v. Dixon
and his wife.
10. Mod. 335.

† *Sect.* 30. It seems also, that an indictment for keeping a common gaming-house may be found against both husband and wife; for it is not the property or ownership of the house that is in question, but the criminal management of it, in which the wife may probably have as great, nay a greater share than the husband.

Rex v. Clarke,
Cowp. 36.

† *Sect.* 31. It seems also, that an information stating the defendant to be a *labourer*, and the offence to have been committed on such a day in the month of *August*, &c. is sufficient to maintain a conviction on 33. Hen. 8. c. 9. s. 16. for it is apparent upon the face of the record that it was *out of Christmas*.

Rex v. Clarke,
Cowp. 36.

† *Sect.* 32. But it has been decided, that a person playing at bowls contrary to this statute, cannot be punished as a disorderly person under the statute 17. Geo. 2. c. 5. s. 2.

As to THE THIRD POINT, viz. The offence of excessive gaming.

† Sect. 33. By 16. Car. 2. c. 7. IT IS RECITED, "That whereas all lawful games and exercises should not be otherwise used than as innocent and moderate recreations, and not as constant trades or callings to gain a living, or make unlawful advantage thereby; and whereas by the immoderate use of them many mischiefs and inconveniences do arise, and are daily found, to the maintaining and encouraging of sundry idle, loose, and disorderly persons in their dishonest, lewd, and dissolute course of life, and to the circumventing, deceiving, coufening, and debauching of many of the younger sort both of the nobility and gentry and others, to the loss of their precious time, and the utter ruin of their estates and fortunes, and withdrawing them from noble and laudable employments and exercises:" AND ENACTED, "That if any person or persons, of any degree or quality whatsoever, at any time or times after the nine-and twentieth day of September 1664, do or shall, by any fraud, shift, coufenge, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, tables, tennis, bowls, kittles, shovel-board; or in or by cock-fightings, horse races, dog-matches, foot-races, or other pastimes, game or games whatsoever, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, act, ride, or run as aforesaid, win, obtain, or acquire to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever; that then every person and persons so offending as aforesaid, shall *ipso facto* forfeit and lose treble the sum or value of money or other thing or things so won, gained, obtained, or acquired; the one moiety thereof to our sovereign lord the king, his heirs and successors, and the other moiety thereof unto the person or persons grieved, or who shall lose the money or other thing or things so gained; so as every such loser and person grieved, in that behalf, do or shall prosecute and sue for the same within six calendar months next after such play; and in default of such prosecution, the same other moiety to such person or persons as shall or will prosecute or sue for the same within one year next after the said six months expired: and that the said forfeitures shall or may be sued for or recovered by action of debt, bill, plaint, or information, in any of his majesty's courts at *Westminster*, wherein no essoin, protection, or wager of law, shall be allowed: and that all and every such plaintiff or plaintiffs,

5. Mod. 1. 4-35.
33. H. 8. c. 9.
2. & 3. P. & M. c. 9.
See 2. Burr. 1080.

Deceits and coufengages in gaming.
Vin. V. 14-4, &c.

18. Geo. 2. c. 34.
See Cowp 282.
See 9. Ann. c. 14.

How to be sued for and recovered.

" informer

“ informer or informers, shall in every such suit and prosecution have and recover his and their treble costs against the person offending and forfeiting as aforesaid, any law, statute, custom, or usage to the contrary in any wise notwithstanding.”

Prevention of
excessive and
immoderate
gaming.

1. Vent. 253.
1. Lutw. 180.
2. Mod. 64.
1. Salk. 344.
2. Lev. 94.
4. Mod. 409.

See Dougl.
714, 715.

The penalty.

† *Stat. 34.* By 16. Car. 2. c. 7. s. 3. “ For the better avoiding and preventing of all excessive and immoderate playing and gaming for the time to come, it is further enacted, that if any person or persons shall play at any of the said games, or any other pastime, game, or games whatsoever (other than with and for ready money), or shall bet on the sides or hands of such as do or shall play thereat, and shall lose any sum or sums of money, or other thing or things so played for, exceeding the sum of one hundred pounds, at any one time or meeting, upon ticket or credit, or otherwise, and shall not pay down the same at the time when he or they shall so lose the same, the party and parties who loseth or shall lose the said monies, or other thing or things so played or to be played for, above the said sum of one hundred pounds, shall not in that case be bound or compelled or compellable to pay or make good the same; but the contract and contracts for the same, and for every part thereof, and all and singular judgments, statutes, recognizances, mortgages, conveyances, assurances, bonds, bills, specialties, promises, covenants, agreements, and other acts, deeds, and securities whatsoever, which shall be obtained, made, given, acknowledged, or entered into, for security or satisfaction of or for the same, or any part thereof, shall be utterly void and of none effect; and that the said person or persons, so winning the said monies or other things, shall forfeit and lose treble the value of all such sum and sums of money, or other thing or things, which he shall so win, gain, obtain, or acquire, above the said sum of one hundred pounds; the one moiety thereof to our said sovereign lord the king, his heirs and successors, and the other moiety thereof to such person or persons as shall prosecute or sue for the same within one year next after the time of such offence committed; and to be sued for by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, wherein no essoin, protection, or wager of law, shall be allowed: and that every such plaintiff or plaintiffs, informer or informers, shall, in every such suit and prosecution, have and receive his treble costs against the person and persons offending and forfeiting as aforesaid, any law, custom, or usage to the contrary notwithstanding.”

; *Stat.*

† *Secl. 35.* By 9. Ann. c. 14. IT IS RECITED, That Mortgages, &c. where the
 “ the laws now in force for preventing the mischiefs which consideration
 “ may happen by gaming have not been found sufficient is for money
 “ for that purpose; therefore, for the further preventing won by gam-
 “ of all excessive and deceitful gaming, IT IS ENACTED, ing, or for re-
 “ That all notes, bills, bonds, judgments, mortgages, or payment of
 “ other securities or conveyances whatsoever, given, granted, money lent at
 “ drawn, or entered into, or executed, by any person or gaming, &c.
 “ persons whatsoever, where the whole or any part of shall be void.
 “ the consideration of such conveyances or securities shall And where
 “ be for any money, or other valuable thing whatsoever, such mort-
 “ won by gaming or playing at cards, dice, tables, tennis, gages, &c.
 “ bowls, or other game or games whatsoever, or by bet- shall encum-
 “ ting on the sides or hands of such as do game at any ber any lands,
 “ of the games aforesaid, or for the reimbursing or repay- &c. they shall
 “ ing any money knowingly lent or advanced for such devolve to
 “ gaming or betting as aforesaid, or lent or advanced at such person as
 “ the time and place of such play, to any person or per- should have
 “ sons so gaming or betting as aforesaid, or that shall been intitled
 “ during such play, so play or bet, shall be utterly void, to them in
 “ frustrate, and of none effect, to all intents and purposes case such
 “ whatsoever, any statute, law, or usage to the contrary grantor had
 “ thereof in any wise notwithstanding; and that where such been dead, &c.
 “ mortgages, securities, or other conveyances, shall be of And all con-
 “ lands, tenements, or hereditaments, or shall be such as conveyances to
 “ incumber or affect the same, such mortgages, securities, hinder such
 “ or other conveyances, shall enure and be to and for the lands from de-
 “ sole use and benefit of, and shall devolve upon, such per- volving, &c.
 “ son or persons as should or might have, or be intitled to, shall be void.
 “ such lands, tenements, or hereditaments, in case the said See 2. Bur.
 “ grantor or grantors thereof, or the person or persons so 1080.
 “ incumbering the same, had been naturally dead, and as if 1. Willf. 220.
 “ such mortgages, securities, or other conveyances, had 2. Willf. 36.
 “ been made to such person or persons so to be intitled 67. 399.
 “ after the decease of the person or persons so incumbering
 “ the same; and that all grants or conveyances to be made
 “ for the preventing of such lands, tenements, or heredita-
 “ ments, from coming to or devolving upon such person
 “ or persons hereby intended to enjoy the same as aforesaid,
 “ shall be deemed fraudulent and void, and of none effect,
 “ to all intents and purposes whatsoever.”

† *Secl. 36.* By 9. Ann. c. 14. f 2. “ Any person or The loser of
 “ persons whatsoever, who shall at any time or sitting, by 10l. at cards,
 “ playing at cards, dice, tables, or other game or games &c. may sue
 “ whatsoever, or by betting on the sides or hands of such for the money
 “ as do play at any of the games aforesaid, lose to any one within three
 “ or more person or persons so playing or betting, in the months.
 “ whole, the sum or value of ten pounds, and shall pay or See 4. Bur.
 “ deliver 2018.

and if the
losers do not
sue, &c. any
other persons
may;

and recover
with treble
value;
one moiety to
the informer,
the other to
the poor.

The person
sued shall an-
swer upon
oath to disco-
ver the money
won.

The person
who shall so
discover and
repay, shall be
indemnified
from further
punishment.

“ deliver the same or any part thereof, the person or per-
“ sons so losing and paying or delivering the same, shall be
“ at liberty, within three months then next, to sue for and
“ recover the money or goods so lost and paid or delivered,
“ or any part thereof, from the respective winner or win-
“ ners thereof, with costs of suit, by action of debt founded
“ on this act, to be prosecuted in any of her majesty's courts
“ of record, in which actions or suits no essoin, protection,
“ wager of law, privilege of parliament, or more than one
“ imparlance, shall be allowed; in which action it shall be
“ sufficient for the plaintiff to alledge that the defendant or
“ defendants are indebted to the plaintiffs, or received to the
“ plaintiff's use, the monies so lost and paid, or converted
“ the goods won of the plaintiff to the defendant's use,
“ whereby the plaintiff's action accrued to him, according
“ to the form of this statute, without setting forth the spe-
“ cial matter: and in case the person or persons who shall
“ lose such money or other thing as aforesaid, shall not,
“ within the time aforesaid, really and *bonâ fide*, and with-
“ out covin or collusion, sue, and with effect prosecute for
“ the money or other thing so by him or them lost and
“ paid or delivered as aforesaid, it shall and may be lawful
“ to and for any person or persons, by any such action or
“ suit as aforesaid, to sue for and recover the same, and treble
“ the value thereof, with costs of suit, against such winner
“ or winners as aforesaid: the one moiety thereof to the
“ use of the person or persons that will sue for the same,
“ and the other moiety to the use of the poor of the parish
“ where the offence shall be committed.”

† *Sec. 37.* By 9. Ann. c. 14. f. 3. “ For the better dis-
“ covery of the monies or other things so won, and to be
“ sued for and recovered as aforesaid, it is further enacted,
“ That all and every the person or persons, who by virtue
“ of this present act shall or may be liable to be sued for the
“ same, shall be obliged and compellable to answer upon
“ oath such bill or bills as shall be preferred against him or
“ them for discovering the sum or sums of money or other
“ thing so won at play as aforesaid.”

† *Sec. 38.* But by 9. Ann. c. 14. f. 4. it is provided,
“ That, upon the discovery and repayment of the money or
“ other thing so to be discovered and repaid as aforesaid,
“ the person or persons who shall so discover and repay the
“ same as aforesaid, shall be acquitted, indemnified, and dis-
“ charged from any further or other punishment, forfeiture,
“ or penalty, which he or they may have incurred by the
“ playing for or winning such money or other thing so dis-
“ covered and repaid as aforesaid, any former or other sta-
“ tute,

“tute, law, or usage, or any thing in this present act contained, to the contrary thereof in any wise notwithstanding.”

† *Seet.* 39. By 9. Ann. c. 14. s. 5. it is further enacted, Any person
 “That if any person or persons whatsoever do or shall, by winning by
 “any fraud or shift, couzenage, circumvention, deceit, or fraud, &c.
 “unlawful device or ill practice whatsoever, in playing at above 10l. at
 “or with cards, dice, or any the games aforesaid, or in or one sitting,
 “by bearing a share or part in the stakes, wagers, or adventures thereof on indictment, &c.
 “tures, or in or by betting on the sides or hands of such as shall forfeit
 “do or shall play as aforesaid, win, obtain, or acquire, to five times the
 “him or themselves, or to any other or others, any sum or value, be
 “sums of money, or other valuable thing or things whatsoever, or shall at any one time or sitting win of any one deemed infamous, and
 “or more person or persons whatsoever above the sum or suffer as in
 “value of ten pounds; that then every person or persons so cases of wilful
 “winning by such ill practice as aforesaid, or winning at perjury.
 “any one time or sitting above the said sum or value of
 “ten pounds, and being convicted of any of the said offences upon an indictment or information to be exhibited
 “against him or them for that purpose, shall forfeit five
 “times the value of the sum or sums of money or other
 “thing so won as aforesaid; and, in case of such ill practice
 “as aforesaid, shall be deemed infamous, and suffer such
 “corporal punishment as in cases of wilful perjury; and
 “such penalty to be recovered by such person or persons
 “as shall sue for the same by such action as aforesaid.”

† *Seet.* 40. By 9. Ann. c. 14. s. 6. after reciting, “that
 divers lewd and dissolute persons live at great expences,
 having no visible estate, profession, or calling, to maintain
 themselves, but support those expences by gaming only,”
 it is further enacted, “That it shall and may be lawful for Two justices
 “any two or more of her majesty’s justices of the peace in may cause
 “any county, city, or liberty whatsoever, to cause to come persons who
 “or to be brought before them, every such person or persons have no visible
 “within their respective limits, whom they shall have just estate, &c. to
 “cause to suspect to have no visible estate, profession, or be brought
 “calling, to maintain themselves by, but do for the most before them,
 “part support themselves by gaming; and if such person and they shall
 “or persons shall not make it appear to such justices, that find sureties
 “the principal part of his or their expences is not maintained for their good
 “by gaming, that then such justices shall require of behaviour, or
 “him or them sufficient securities for his or their good be- be committed.
 “haviour for the space of twelve months; and in default
 “of his or their finding such securities, to commit him or
 “them to the common gaol, there to remain until he or
 “they shall find such securities as aforesaid.”

Persons so
finding sure-
ties and play-
ing for 20s.
forfeit recog-
nizance.

† *Stat.* 41. By 9. Ann. c. 14. s. 7. “ If such person he
persons so finding sureties as aforesaid shall, during tor
time for which he or they shall be so bound to the good
behaviour, at any one time or sitting, play or bet for any
sum or sums of money, or other thing, exceeding in the
“ whole the sum or value of twenty shillings, that then
such playing shall be deemed or taken to be a breach of
his or their behaviour, and a forfeiture of the recogni-
zance given for the same.”

Assaulting,
&c. on account
of money won
at play, to
forfeit all his
goods, and be
imprisoned
two years.

† *Stat.* 42. And by 9. Ann. c. 14. s. 8. “ For the pre-
venting of such quarrels as shall and may happen upon the
account of gaming, it is enacted, That in case any person
or persons whatsoever shall assault and beat, or shall chal-
lenge or provoke to fight, any other person or persons
whatsoever, upon account of any money won by gaming,
playing or betting at any of the games aforesaid, such per-
son or persons assaulting and beating, or challenging or
provoking to fight, such other person or persons upon
the account aforesaid, shall, being thereof convicted
upon an indictment or information to be exhibited against
him or them for that purpose, forfeit to her majesty, her
heirs and successors, all his goods, chattels, and personal
estate whatsoever, and shall also suffer imprisonment, with-
out bail or mainprize, in the common gaol of the county
where such conviction shall be had, during the term of
two years.”

This act shall
not extend to
prevent gam-
ing in any of
the queen's
palaces during
her residence
there, &c.

† *Stat.* 43. But by 9. Ann. c. 14. s. 9. it is provided,
That nothing in this act contained shall extend to prevent
or hinder any person or persons from gaming or playing
at any of the games aforesaid within any of her majesty's
palaces of *St. James* or *Whitehall*, during such time as her
majesty, her heirs or successors, shall be actually resident
at either of the said two palaces; or in any other royal
palaces, where her majesty, her heirs or successors, shall
be actually resident, during the time of such actual resi-
dence; so as such playing be not in any house, lodging,
or other part of any of the said palaces, the freehold or
inheritance whereof is or shall be out of the crown, or is
or shall be in lease to any person or persons, during such
time as such freehold and inheritance shall be out of the
crown, or such lease shall continue, and so as such play-
ing be for ready money only.”

Court of equi-
ty, where a
bill shall be
filed for any
sum won, may enforce their decree as in other causes.

† *Stat.* 44. By 18. Geo. 2. c. 34. s. 3. which recites 9.
Ann. c. 14. it is enacted, “ That in case any bill or bills
shall be brought, exhibited, and filed, in any court of

“ equity

“ equity, against any person or persons, for any sum or sums
 “ of money won by any person or persons, it shall and
 “ may be lawful for such court wherein such bill shall be
 “ brought, exhibited, and filed, to proceed and decree there-
 “ upon, and enforce such decree or decrees as shall be made
 “ in pursuance thereof, in the same manner as is practised
 “ and used in other causes, upon bills and answers de-
 “ pending in the courts where such bill shall be so brought
 “ and exhibited ”

† *Stat.* 45. By 18. Geo. 2 c. 34. s. 8. “ If any person
 “ shall win or lose at play, or by betting, at any one time,
 “ the sum or value of ten pounds, or within the space of
 “ twenty-four hours the sum or value of twenty pounds,
 “ such person shall be liable to be indicted for such offence
 “ within six months after it is committed, either before his
 “ majesty’s justices of the king’s bench, assize, gaol-delivery,
 “ or grand sessions; and being thereof legally convicted,
 “ shall be fined five times the value of the sum so won or
 “ lost, which fine (after such charges as the Court shall
 “ judge reasonable allowed to the prosecutors and evidence
 “ out of the same) shall go to the poor of the parish or
 “ place where such offence shall be committed.”

*Persons losing
 10l. at one
 time, or 20l.
 in 24 hours,
 may be in-
 dicted;
 and fined five
 times the va-
 lue.*

† *Stat.* 46. But by 18. Geo. 2. c. 34. s. 9. it is pro-
 vided, “ That if any person so offending shall discover any
 “ other person to offending, so that such person be there-
 “ upon convicted, the person so discovering shall be dis-
 “ charged and indemnified from all penalties by reason of
 “ any such offence, if such person so discovering hath not
 “ been before convicted thereof, and shall be admitted as
 “ an evidence to prove the same.”

*Offenders dis-
 covering
 others dis-
 charged.*

† *Stat.* 47. It has been determined, that a wager on a
 collateral matter, and not on the event of the game played
 at, is not within these statutes; as where two persons were
 playing at *back-gammon*, and one of them having touched a
 man, the other laid him a wager of a hundred pounds, that
 having touched it he was bound by the law of the game to
 play the man. But no action will lie on a wager respecting
 the *mode of playing* an illegal game, as *hazard*.

*Pope v. St.
 Ledger,
 Salk. 344.
 Brown v.
 Leeson,
 2. H. Bl. Rep.
 43.*

† *Stat.* 48. So also where *A.* betted *B.* that one *C.* would
 not run four miles in twenty-one minutes, it was ad-
 judged not within the statutes, because as *C.* was not play-
 ing at such game, it was not a wager within the act; for
C. might be running for his amusement, and not to win
 any bet.

*Lynal v.
 Longbotham,
 2. Wils. 36.*

2. Willf. 36. † *Sect. 49.* It is however decided, that a *foot-race*, whether the race be upon a given distance or against a certain time, is a game prohibited by 9. Ann. c. 14.

Brown v. Beckley,
Cowp. 222. † *Sect. 50.* So also a wager, that *A.* did not find within such a time a man who should carry on *foot* twenty-four stone weight ten miles in fifteen hours, has been adjudged a wager within the statute.

Jefferies v. Walter,
1. Willf. 240. † *Sect. 51.* It seems also, that *cricket* is an unlawful game within the statute 9. Ann. c. 14.

Blaxton v. Pyc,
2. Willf. 309. † *Sect. 52.* So also it has been adjudged, that laying above ten pounds upon a *horse-race* is an illegal bet within the statutes of 16. Car. 2. c. 7. and 9. Ann. c. 14. for that these statutes ought to be extended to all *sports* as well as *games*, in order to prevent excessive betting.

Clayton v. Jennings,
Black. 706. † *Sect. 53.* So also it is determined, that a wager of *ten pounds* to *five pounds* upon a *horse-race* is within the act, although the race was for a legal plate; for although *five pounds* are less than the sum mentioned in the statute, yet as the loser of the ten pounds would not be obliged to pay, the wager is bad for want of mutual risque.

Bones v. Booth,
2. Bl. Rep. 1126. † *Sect. 54.* It hath been determined, that if two persons play at cards from *Monday* evening to *Tuesday* evening, without any interruption except for an hour or two at dinner, and one of them has then won a balance of seventeen guineas, this is won at one sitting within the statute.

Noell v. Reynolds,
2. Show. 185. † *Sect. 55.* So also it is said, that if above an hundred pounds be lost upon tick at one sitting, although to several persons, it cannot be recovered.

Anonymous,
8. Mod. 137. † *Sect. 56.* It seems, that if a loser prefer an indictment against a winner on the statute 9. Ann. c. 14. and the grand jury find the bill, the Court will not permit an information to be filed against the defendant, although the indictment was quashed, and, of course, the defendant never tried upon it; for the grand jury may find another bill for the same offence.

Rex v. Lookup,
2. Stra. 1048. † *Sect. 57.* It is also settled, that if a defendant be convicted on an information on the statute 9. Ann. c. 14. the Court can only give judgment *quod convictus est*, and cannot set a fine on the offender to five times the value, but that
an

an action must be brought on the judgment to recover the penalty.

† *Sect. 58.* It is settled, that if one person, *lend* another person money for the very purpose of gaming with, yet if he take no written security for it, the lender may recover it back by an action of *assumpsit* on the implied contract; for the statute only makes *securities* void, and is silent respecting *contracts*; and perhaps the Legislature thought that a very extensive and prejudicial credit was not likely to be given where no written security could be legally taken. *Barjean v. Walmsley, 2. Stra. 1249.*

† *Sect. 59.* So also money paid by *A.* at the request of *B.* for the amount of a bet which *B.* had lost to another person, may be recovered on the implied contract. *2. Wils. 309.*

† *Sect. 60.* And it has been decided, that where a security, as for instance a bill of exchange, is given for 600*l.* and it appears that part of it was for money *won at play*, and part for money *lent* at the time and place of play, the contract is divisible, and the holder may recover for so much as was *lent* at the time and place of play. *Robinson v. Bland, 2. Burr. 1078.*

† *Sect. 61.* But a security of any kind given for money won at play is absolutely void, even in the hands of an innocent indorser, who has *bonâ fide* paid *value* for it, and had no notice that it was originally given on an illegal consideration; and the court of chancery may order the void security to be given up and cancelled, and any money which may have been paid upon it to be refunded. *8. Mod. 57. 2. Mod. 279. Dougl. 743. Rawdon v. Shadwell, 2. Stra. 1249.*

AS TO THE FOURTH POINT, *viz.* The offence of horse-racing.

† *Sect. 62.* By 13. Geo. 2. c. 19. f. 1. "Whereas the great number of horse-races for small plates, prizes, or sums of money, have contributed very much to the encouragement of idleness, to the impoverishment of many of the meaner sort of the subjects of this kingdom, and the breed of strong and useful horses hath been much prejudiced thereby:" for remedy thereof it is ENACTED, "That no person or persons whatsoever shall enter, start, or run any horse, mare, or gelding, for any plate, prize, sum of money, or other thing, unless such horse, mare, or gelding, shall be truly and *bonâ fide* the property of, and belonging to such person so entering, starting, or running the same horse, mare, or gelding; nor shall any one person enter and start more than one horse, mare, or gelding, and no more entered by the owners, than one at a time." *Horses to be entered by the owners.*

“or gelding, for one and the same plate, prize, or sum of money, or other thing; and in case any person or persons shall enter, start, or run any horse, mare, or gelding, not being the property truly and *bona fide* of such person so entering, starting, or running the same for any plate, prize, sum of money, or other thing, the said horse, mare, or gelding, or the value thereof, shall be forfeited, to be sued for and recovered, and disposed of, in manner as is hereinafter mentioned; and in case any person or persons shall enter and start more than one horse, mare, or gelding, for one and the same plate, prize, or sum of money, or other thing, every such horse, mare, or gelding (other than the first entered horse, mare, or gelding), or the value thereof, shall be forfeited, to be sued for and recovered, and disposed of, in manner as hereinafter is mentioned.”

No plate to be
run for under
50l. value

+ *Sec.* 63. By 13. Geo. 2. c. 19. s. 2. it is further enacted, “That no plate, prize, sum of money, or other thing, shall be run for by any horse, mare, or gelding, or advertised, published, or proclaimed, to be run for by any horse, mare, or gelding, unless such plate, prize, or sum of money shall be of the full, real, and intrinsic value of fifty pounds, or upwards; and in case any person or persons shall enter, start, or run any horse, mare, or gelding, for any plate, prize, sum of money, or other thing of less value than fifty pounds, or shall make, print, advertise, publish, or proclaim any advertisement or notice of any plate, prize, sum of money, or other thing of less value than fifty pounds as aforesaid, to be run for by any horse, mare, or gelding; every such person or persons so entering, starting, or running such horse, mare, or gelding, for such plate, prize, sum of money, or other thing of less value than fifty pounds as aforesaid, shall forfeit and lose the sum of two hundred pounds, to be sued for, recovered, and disposed of in such manner as is hereinafter prescribed and directed; and every person or persons who shall make, print, publish, advertise, or proclaim any advertisement or notice of any plate, prize, sum of money, or other thing of less value than fifty pounds as aforesaid, to be run for by any horse, mare, or gelding, shall forfeit and lose the sum of one hundred pounds.”

on penalty of
200l.

+ *Sec.* 64. By 13. Geo. 2. c. 19. s. 3. it is further enacted, “That no horse, mare, or gelding, being of the age of five years, shall be entered, started, or run for any plate, prize, sum of money, or other thing whatsoever, unless

“ unless such horse, mare, or gelding, shall carry ten stone ^{Five years old}
 “ weight, computing fourteen pounds to each stone ^{horses to carry}
 “ weight; and that no horse, mare, or gelding, being of ^{ten stone,}
 “ the age of six years, shall be entered, started, or run for ^{six years old}
 “ any plate, prize, sum of money, or other thing whatso- ^{eleven stone,}
 “ ever, unless such horse, mare, or gelding, shall carry
 “ eleven stone weight, computing fourteen pounds to each
 “ stone weight; and that no horse, mare, or gelding,
 “ being of the age of seven years, shall be entered, started, ^{seven years old}
 “ or run for any plate, prize, sum of money, or other thing ^{twelve stone,}
 “ whatsoever, unless such horse, mare, or gelding, shall
 “ carry twelve stone weight, computing fourteen pounds
 “ to each stone weight; and in case any person or persons
 “ shall enter, start, or run any horse, mare, or gelding, of
 “ either of the ages aforesaid, for any plate, prize, or sum
 “ of money or other thing, carrying less than the weights
 “ hereinbefore directed to be carried, such horse, mare, or
 “ gelding, or the value thereof, shall be forfeited, and the
 “ person or persons so entering, starting, or running such
 “ horse, mare, or gelding, shall forfeit and lose the sum of
 “ two hundred pounds.”

† *Seet.* 65. By 13. Geo. 2. c. 19. s. 4. “ Every race that ^{Race to be be-}
 “ shall be hereafter run for any plate, prize, or sum of ^{gun and end-}
 “ money, shall be begun and ended in the same day.” ^{ed in one day.}

† *Seet.* 66. By 13. Geo. 2. c. 19. s. 5. it is further ^{Matches to be}
 enacted, “ That no person or persons whatsoever shall start ^{at Newmar-}
 “ or run any match with or between any horse, mare, or ^{ket and Black}
 “ gelding, for any sum of money, plate, prize, or other ^{Hambleton}
 “ thing whatsoever, unless such match shall be started or ^{only, and for}
 “ run at *Newmarket Heath*, in the counties of *Cambridge* and ^{not less than}
 “ *Suffolk*, or *Black Hambleton*, in the county of *York*, or the ^{50*l.*}
 “ said sum of money, plate, prize, or other thing, be of the
 “ real and intrinsic value of fifty pounds, or upwards:
 “ and in case any person or persons shall start or run any
 “ such match at any other place than *Newmarket Heath* or
 “ *Black Hambleton* aforesaid, or for any plate, prize, sum of
 “ money, or other thing of less value than fifty pounds,
 “ every such person or persons shall forfeit and lose the
 “ sum of two hundred pounds.”

† *Seet.* 67. By 13. Geo. 2. c. 19. s. 6. it is further
 enacted, “ That all penalties and forfeitures incurred by
 “ any person or persons for any offence against this act
 “ shall be sued for and recovered by any action, bill, plaint,
 “ or information, in any of his majesty’s courts of record
 “ at *Westminster*, or at the assizes, and shall be disposed of,
 “ one moiety thereof to the use of such person or persons
 “ 25

" as shall so sue for the same, and the other moiety to the
 " use of the poor of such parish or place where the offence
 " shall be committed; except such one moiety of such
 " penalties and forfeitures as shall be incurred by, and
 " recovered of any person or persons within the county of
 " *Somerset*; which said one moiety shall go and be applied
 " to and for the use and benefit of the poor persons
 " admitted into the hospital or infirmary lately erected in
 " the city of *Bath* for the benefit of poor persons resorting
 " to the said city for the benefit of the mineral waters
 " there."

Entrance money to be paid to the second best horse.

+ *Stat.* 68. By 13. Geo. 2. c. 19. s. 7. it is further enacted, " That all and every sum or sums of money to be
 " paid for entering of any horse, mare, or gelding, to start
 " or run for any plate, prize, sum of money, or other thing,
 " shall go and be paid to the second best horse, mare, or
 " gelding, which shall start or run for such plate, prize, or
 " sum of money, as aforesaid."

* Gifts left for annual races not to be altered.

+ *Stat.* 69. By 13. Geo. 2. c. 19. s. 8. " Provided always,
 " that nothing herein contained shall extend, or be con-
 " strued to extend, to prevent the starting or running any
 " horse, mare, or gelding, for any plate, prize, or other
 " thing or things now issuing out of, or paid for, or by the
 " rents, issues, and profits of any lands, tenements, or
 " hereditaments, or of or by the interest of any sum or sums
 " of money now chargeable with the same, or appropriated
 " for that purpose."

Double costs.

+ *Stat.* 70. By 13. Geo. 2. c. 19. s. 10. it is further enacted, " That in any action, bill, plaint, or information,
 " to be brought or commenced by virtue of this act, no
 " essoin, protection, wager of law, or more than one im-
 " parlance, shall be allowed; and that over and above the
 " penalties and forfeitures to be recovered by virtue of this
 " act, the plaintiff or informer shall recover his or her
 " double costs."

+ *Stat.* 71. But by 18. Geo. 2. c. 34. s. 11. AFTER RECITING the third section of the above statute, AND THAT
 " the thirteen royal plates of one hundred guineas each,
 " annually run for, as also the high prices that are constantly
 " given for horses of strength and size, are sufficient to en-
 " courage breeders to raise their cattle to the utmost size and
 " strength possible;" it is therefore enacted, " That it shall
 " and may be lawful for any person or persons to run any
 " match, or to start and run for any plate, prize, sum of
 " money, or other thing, of the real and intrinsic value of
 " fifty

“ fifty pounds or upwards, at any weights whatsoever, and
 “ at any place or places whatsoever, without incurring or
 “ being liable to the penalty or penalties in the said act of
 “ the thirteenth year of his majesty's reign., relating to
 “ weights as afore-mentioned, and in the same manner as
 “ might have been done if the said act had never been
 “ made; any thing herein contained to the contrary not-
 “ withstanding.”

† Sect. 72. By 24. Geo. 3. c. 31. s. 5. it is further enacted, Two guineas
 “ That the owner of every horse, mare, or gelding, entered to be paid pre-
 “ to start or run for any plate, prize, sum of money, or vious to enter-
 “ other thing, shall, previous to the entering or starting ing any horse
 “ such horse, mare, or gelding, pay the sum of two pounds to run for a
 “ two shillings, as the duty for one year; which said money plate,
 “ shall be paid, for the use of his majesty, his heirs and
 “ successors, into the hands of the clerk of the course,
 “ book-keeper, or other person authorized to make the
 “ entry of such horse, mare, or gelding, being to start or
 “ run for such plate, prize, sum of money, or other thing,
 “ as aforesaid; and if any owner of such horse, mare, or
 “ gelding shall, previous to the starting, neglect or refuse to
 “ pay the said sum of two pounds two shillings for such
 “ entrance to the clerk of the course, book-keeper, or other
 “ person authorized to make the entry as aforesaid, the
 “ owner or owners of every such horse, mare, or gelding,
 “ shall forfeit and pay the sum of twenty pounds, to be re- on penalty of
 “ covered and applied in such manner as hereinafter is 20l.
 “ directed.”

† Sect. 73. By 24. Geo. 3. c. 31. s. 6. it is further enacted, Penalty on
 “ That every clerk of the course, book-keeper, or other clerk of th
 “ person, so receiving the said sum of two pounds two course, &c.
 “ shillings as entrance money, shall, within fourteen days
 “ after the receipt thereof, give an account of all monies
 “ received by him for horses so entered to start as aforesaid,
 “ to the distributor of stamps in the county where the race
 “ was run, upon demand made by such distributor for the
 “ same, and producing his appointment as distributor under
 “ the hands and seals of three of the commissioners of his
 “ majesty's stamp-duties; and in case of not accounting
 “ for and paying the same, he shall, for every default, in
 “ not delivering such accounts, pay the sum of one hundred
 “ pounds; and for every default of payment of the monies
 “ due on such accounts, forfeit and pay double the amount
 “ of the monies due on the said accounts at the time of
 “ such default.”

† Sect.

Allowance to be made to the clerk of the court, &c. + *Stat.* 74. By 24. Geo. 3. c. 31. s. 7. it is further enacted, "That the said head distributors of stamps, to whom such money shall be paid as aforesaid, shall make an allowance of one shilling in the pound to such clerk of the court, book-keeper, or other person as aforesaid, for all monies so accounted for and paid by him to such distributor as aforesaid."

Neighbouring justice. + *Stat.* 75. By 24. Geo. 3. c. 31. s. 19. it is enacted, "That it shall and may be lawful to and for any justice of the peace residing near the place where the offence shall be committed, to hear and determine any offence against this act; which said justice of the peace is hereby authorized and required, upon any information exhibited, or complaint made in that behalf, to summon the party accused, and also the witnesses on either side, and shall examine into the matter of fact; and upon due proof made thereof, either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses, to give judgment or sentence for the penalty or forfeiture, according as in and by this act is directed, and to award and issue out his warrants, under his hand and seal, for the levying any pecuniary penalties or forfeitures so adjudged on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within six days, rendering to the party the overplus (if any), and where the goods of such offender cannot be found sufficient to answer the penalty, to commit such offender to prison, there to remain for the space of three months, unless such pecuniary penalty shall be sooner paid and satisfied: and if any person or persons shall find himself or themselves aggrieved by the judgment of any such justice, then he or they shall and may, upon giving security to the amount of the value of such penalty and forfeiture, together with such costs as shall be awarded in case such judgment shall be affirmed, appeal to the justices of the peace at the next general quarter-sessions for the county, riding, or place, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment of such justice shall be affirmed, it shall be lawful for such justices to award the person or persons to pay costs occasioned by such appeal, as to them shall seem meet."

Penalties.

Appeal.

Witnesses shall, on default, forfeit 40s. + *Stat.* 76. By 24. Geo. 3. c. 31. s. 20. it is further enacted, "That if any person or persons shall be summoned as a witness or witnesses, to give evidence before such justice or justices of the peace, touching any of the matters relative to this act, either on the part of the prosecutor,

"scoutor, or of the person or persons accused; and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed of by such justice or justices of the peace before whom the prosecution shall be depending; that then every such person shall forfeit for every such offence, the sum of forty shillings, to be levied and paid in such manner, and by such means, as are hereinbefore directed as to other penalties."

† *Seet. 77.* By 24. Geo. 3. c. 31. s. 21. "Provided Justice may mitigate.
"nevertheless, that it shall and may be lawful to and for the said justice, where he shall see cause, to mitigate and lessen any such penalties as he shall think fit, reasonable costs and charges of the officers and informers, as well in making the discovery as in prosecuting the same, being always allowed, over and above such mitigation, and so as such mitigation do not reduce the penalties to less than a moiety of the penalties incurred, over and above the said costs and charges; any thing contained in this act, or any other act of parliament, to the contrary notwithstanding."

† *Seet. 78.* It is settled, that if an agreement be made Bedmeade v. Gale, 4 Burr 2453.
that each party shall start his horse, and that if either shall refuse or neglect he shall forfeit, and pay *twenty-five pounds* to the other, the one party to pay the other *five pounds* beforehand, as a consideration to induce him to make the match, and the other refuse to run the match, that this is not a match for less than fifty pounds.

† *Seet. 79.* And as all *horse-races* except those which are conformable to these statutes are illegal. a wager on a horse-race not authorized cannot, of course, be recovered. Johnston v. Bann, 4 Term Rep. 1.

As to THE FIFTH POINT, *viz.* The offence of gaming, by means of lotteries, cards, dice, &c.

† *Seet. 80.* By 10. and 11. Will. 3. c. 17. s. 1. IT IS RECITED, "That whereas several evil-disposed persons, for divers years last past, have set up many mischievous and unlawful games, called *lotteries*, not only in the cities of London and Westminster, and in the suburbs thereof, and places adjoining, but in most of the eminent towns and places in England, and in the dominion of Wales, and have thereby most unjustly and fraudulently got to themselves great sums of money from the children and servants of several gentlemen, traders, and merchants, and from other unwary persons, to the utter ruin and impoverishment of many

Lotteries declared publick nuisances, and all grants thereof void.

many families, and to the reproach of the *English* laws and government, by colour of several patents or grants under the great seal of *England* for the said lotteries, or some of them; which said grants or patents are against the common good, trade, welfare, and peace, of his majesty's kingdoms:” for remedy whereof it is enacted, “That all such lotteries, and all other lotteries, are common and publick nuisances, and that all grants, patents, and licences for such lotteries, or any other lotteries, are void and against law.”

From 29. Dec. 1699, no person to keep open such lottery, &c. Penalty on offender.

† *Stat.* 81. By 10. and 11. Will. 3. c. 17. s. 2. it is further enacted, “That no person or persons whatsoever shall publicly or privately exercise, keep open, shew, or expose to be played at, drawn at, or thrown at, or shall draw, play, or throw at any such lottery, or any other lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and that every person or persons that shall exercise, expose, open, or shew to be played, thrown, or drawn at, any such lottery, play, or device, or other lottery, shall forfeit for every such offence the sum of five hundred pounds, to be recovered by information, bill, plaint, or action at law, in any of his majesty's courts at *Westminster*, wherein no essoin, wager of law, nor any more than one imparlance, shall be allowed; one third part thereof to the use of his majesty, his heirs and successors, one other third part thereof to the use of the poor of the parish where such offence shall be committed, and the other third part thereof, together with double costs, to the party that shall inform and sue for the same; and the said parties so offending shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided.”

Penalty on playing at such lotteries. 22. Geo. 2. c. 28.

† *Stat.* 82. By 10. and 11. Will. 3. c. 17. s. 3. it is further enacted, “That every person or persons that shall play, throw, or draw at any such lottery, play, or device, or other lotteries, shall forfeit for every such offence the sum of twenty pounds, to be recovered by information, bill, plaint, or action at law, in any of his majesty's courts at *Westminster*, wherein no essoin, wager of law, nor any more than one imparlance, shall be allowed; one third part thereof to the use of his majesty, his heirs, and successors, one other third part thereof to the use of the poor of the parish where such offence shall be committed, and the other third part thereof, together with double costs, to the party that shall inform and sue for the same.”

† *Stat.*

† *Stat. 83.* By 9. Ann. c. 6. s. 56. it is further enacted, Persons setting up such
lotteries forfeit 100l.
 “ That the justices of the peace, and all mayors, bailiffs,
 “ head officers, constables, and other her majesty’s civil
 “ officers, within their respective jurisdictions, are hereby
 “ empowered and required to use their utmost endeavours
 “ to prevent the drawing of any such unlawful lottery,
 “ heretofore or hereafter to be set up, by all lawful ways
 “ and means; and that every person who shall set up,
 “ or shall, by writing or printing, publish the setting up
 “ any such unlawful lottery, with intent to have such
 “ lottery drawn, shall forfeit for every such offence one
 “ hundred pounds, to be recovered by information, bill,
 “ plaint, or action at law, in any of her majesty’s courts at
 “ *Westminster*, wherein no essoin, wager of law, nor any
 “ more than one imparlance, shall be allowed; one third
 “ part thereof to the use of her majesty, her heirs, and suc-
 “ cessors; one other third part thereof to the use of the
 “ poor of the parish where such offence shall be com-
 “ mitted; and the other third part thereof, together with
 “ full costs, to the party who shall inform and sue for the
 “ same.”

† *Stat. 84.* By 10. Ann. c. 26. s. 109. it is enacted,
 “ That every person or persons who shall erect, set up,
 “ or keep any office or place, for making insurances on
 “ marriages, births, christenings, or service, or any of
 “ them, or any other office or place, under the denomi-
 “ nation of sales of gloves, of fans, of cards, of num-
 “ bers, of the queen’s picture, for the improvement of
 “ small sums of money, or the like offices or places, under
 “ the pretence of improving small sums of money, shall
 “ forfeit for every such offence the sum of five hundred
 “ pounds, to be recovered, with costs of suit, by action
 “ of debt, bill, plaint, or information, in any of her ma-
 “ jesty’s courts aforesaid, wherein no essoin, protection,
 “ wager of law, nor any more than one imparlance, shall
 “ be allowed; one third part thereof to the use of her
 “ majesty, her heirs, and successors, one other third part
 “ thereof to the use of the poor of the parish of the
 “ place where the offence shall be committed, and the
 “ other third part thereof, together with full costs of suit,
 “ to the person or persons who shall inform or sue for
 “ the same: and every printer or other person who shall,
 “ by writing or printing, publish the setting up or keeping
 “ any such office or place under any the denominations
 “ aforesaid, or like denominations, for the improvement
 “ of small sums of money, shall, for every such offence,
 “ forfeit the sum of one hundred pounds, to be reco-
 “ vered

“vered and distributed in such manner as the penalty
 “last-mentioned is to be recovered and distributed ; and
 “every person or persons who in any office or place
 “erected or set up for making insurances on marriages,
 “births, christenings, or service, or under any other the
 “denominations aforesaid, or any like denominations, for
 “improvement of small sums, shall make or suffer to
 “be made therein any new insurances or contracts for
 “new insurances on marriages, births, christenings, or
 “service, or receive any payments into any the offices or
 “places aforesaid, for improvement of small sums of mo-
 “ney, shall forfeit, for every such offence, the sum of one
 “hundred pounds, to be recovered and distributed in like
 “manner.”

Persons who
 shall erect
 offices for sale,
 &c. by way of
 lottery, &c.
 shall forfeit
 500l. one
 third to the
 crown, ano-
 ther to the in-
 former, and
 the other to
 the poor
 where, &c.

† *Stat. 85.* By 8. Geo. 1. c. 2. s. 36. it is enacted,
 “That all and every person or person who shall erect,
 “set up, continue, or keep, or shall cause or procure
 “to be erected, set up, continued, or kept, any office or
 “place under the denomination of sales of houses, lands,
 “advowsons, presentations to livings, plate, jewels, ships,
 “goods, or other things, for the improvement of small
 “sums of money ; or shall sell or expose to sale any
 “houses, lands, advowsons, presentations to livings, plate,
 “jewels, ships, goods, or other things by way of lot-
 “tery, or by lots, tickets, numbers, or figures ; or shall
 “make, print, advertise, or publish, or cause to be made,
 “printed, advertised, or published, proposals or schemes
 “for advancing small sums of money by several persons,
 “amounting in the whole to large sums, to be divided
 “among them by the chances of the prizes in some
 “publick lottery or lotteries, established or allowed by act
 “of parliament ; or shall deliver out, or cause or procure
 “to be delivered out, tickets to the persons advancing such
 “sums, to entitle them to a share of the money so advanced
 “according to such proposals or schemes ; or shall make,
 “print, or publish, or cause to be made, printed, or pub-
 “lished, any proposal or scheme of the like kind or nature,
 “under any denomination, name, or title whatsoever ; and
 “shall be thereof convicted upon the oath or oaths of one
 “or more credible witness or witnesses, by two or more
 “justices of the peace for the county, division, or liberty
 “where such offence shall be committed, or the offender
 “shall be found (which oath such justices of the peace are
 “hereby impowered and required to administer), the person
 “so convicted shall, for every such offence, over and above
 “any former penalties inflicted by any former act or acts
 “of parliament made against any private or unlawful lot-
 “teries,

"teries, forfeit the sum of five hundred pounds; one third
 "part thereof to his majesty, his heirs and successors, one
 "other third part thereof to the informer, and the remain-
 "ing third part thereof to the poor of the parish where such
 "offence shall be committed; the same to be levied by dis-
 "tress and sale of the offender's goods, by warrant under
 "the hands and seals of such justices before whom such
 "offender shall be convicted as aforesaid; and shall also,
 "for every such offence, by such justices be committed to
 "the county gaol, there to remain without bail or main-
 "prize for the space of one whole year, and from thence
 "till the said sum of five hundred pounds, so forfeited as
 "aforesaid, shall be fully paid and satisfied: provided never-
 "theless, that any person who shall think himself or herself
 "aggrieved by the judgment or determination of two or
 "more such justices, in any the cases aforesaid, shall have
 "liberty to appeal to the next quarter-sessions to be held
 "for the county, city, or place, where such judgment or
 "determination shall be made or given; and that the judg-
 "ment to be given by the justices at the said next quarter-
 "sessions shall be final."

Persons ag-
 grieved may
 appeal to quar-
 ter-sessions.

† Sect. 86. By 8. Geo. 1. c. 2. s. 37. it is further enacted, Persons con-
 "That all and every person or persons who, after the time tributing to
 "aforesaid, shall be adventurer or adventurers in, or shall sales, &c.
 "pay any money or other consideration, or any ways con- to forfeit dou-
 "tribute unto, or upon the account of any such sales, lot- ble the sum
 "teries, proposals, or schemes aforesaid, shall forfeit for contributed,
 "every such offence double the sum paid or contributed, one moiety to
 "to be recovered with costs of suit by action of debt, bill, the crown, the
 "plaint, or information, in any of his majesty's courts of other to the
 "record at *Westminster*, wherein no essoin, protection, wager informer.
 "of law, nor any more than one imparlance, shall be al-
 "lowed; one moiety thereof to his majesty, his heirs, and
 "successors, the other moiety thereof to the person or per-
 "sons who shall inform or sue for the same."

† Sect. 87. By 9. Geo. 1. c. 19. s. 4. it is further Clause to pre-
 enacted, "That if any person or persons shall, by vir- vent foreign
 "tue or colour of any grant or authority from any so- lotteries being
 "vereign prince, state, or government whatsoever; erect, carried on in
 "set up, continue, or keep, or shall cause or procure to this kingdom.
 "be erected, set up, continued, or kept, any lottery or
 "undertaking in the nature of a lottery, under any deno-
 "mination whatsoever, or shall make, print, or publish, or
 "cause to be made, printed, or published, any proposal or
 "scheme for any such lottery or undertaking, or shall
 "within this kingdom sell or dispose of any ticket or
 "tickets

Penalty.

“ tickets in any foreign lottery, and shall be convicted of
 “ any the said offences, upon the oath or oaths of one or
 “ more credible witness or witnesses, by two or more
 “ justices of the peace of the county, division, or liberty
 “ where such offence shall be committed, or the offender
 “ shall be found (which oath such justices of the peace are
 “ hereby impowered and required to administer), the person
 “ so convicted shall, for every such offence (over and above
 “ any former penalties inflicted by any former act or acts of
 “ parliament made against unlawful lotteries), forfeit the
 “ sum of two hundred pounds; one third part thereof to
 “ his majesty, his heirs, and successors, one other third part
 “ thereof to the informer, and the remaining third part
 “ thereof to the poor of the parish where such offence shall
 “ be committed; the same to be levied by distress and sale
 “ of the offender's goods, by warrant under the hands and
 “ seals of such justices before whom such offender shall be
 “ convicted as aforesaid, and shall also for every such offence
 “ by such justices be committed to the county gaol, there to
 “ remain without bail or mainprize for the space of one
 “ whole year, and from thence till the said sum of two
 “ hundred pounds, so forfeited as aforesaid, shall be fully
 “ paid and satisfied.”

Appeal to
quarter-ses-
sions.

+ *Sect. 88.* By 9. Geo. 1. c. 19. s. 5. “ Provided never-
 “ theless, that any person who shall think him or herself
 “ aggrieved by the judgment or determination of such jus-
 “ tices in any the cases aforesaid, shall have liberty to appeal
 “ to the next quarter-sessions to be held for the county,
 “ city, or place, where such judgment or determination
 “ shall be made or given, and that the judgment to be
 “ given by the justices of the next quarter-sessions shall be
 “ final.”

200l. penalty
on persons
selling or pro-
curing chan-
ces in foreign
lotteries after
24 June 1733.

+ *Sect. 89.* By 6. Geo. 2. c. 35. s. 29. “ If any person
 “ or persons shall sell, procure, or deliver any ticket, receipt,
 “ chance, or number, in or belonging to any foreign lot-
 “ tery or pretended foreign lottery, or in or belonging to
 “ any class, part, or division of such lottery, or pretended
 “ lottery, or in or belonging to any undertaking whatso-
 “ ever in the nature of a lottery, or shall sell, procure, or
 “ deliver any ticket, receipt, chance, or number in or
 “ belonging to any duplicate or pretended duplicate of any
 “ foreign lottery or pretended foreign lottery, or shall re-
 “ ceive, or cause to be received, any money whatsoever for
 “ any such ticket, receipt, chance, or number, or for or in
 “ consideration of any money to be repaid, in case any
 “ ticket

“ ticket or tickets, number or numbers in any foreign lottery or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate, and shall be convicted of any of the said offences, upon action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster* (in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed), or upon the oath or oaths, or affirmation or affirmations, of one or more credible witnesses or witnesses, before two or more justices of the peace of the county, division, or liberty, where such offence shall be committed, or the offender shall be found (which oath or affirmation such justices of the peace are hereby empowered and required to administer or give), the person so convicted shall, for every such offence, forfeit the sum of two hundred pounds; one third part thereof to the use of his majesty, his heirs, and successors, one third part thereof to him, her, or them who shall sue for the same, or make information of the offence, and the remaining third part thereof to the poor of the parish where such offence shall be committed; the same (in case of conviction before two justices) to be levied by distress and sale of the offender's goods, by warrant under the hands and seals of such justices before whom such offender shall be convicted; and shall also, for every such offence, by the Court or by such justices, as the case shall happen, be committed to the county gaol, there to remain, without bail or mainprize, for the space of one whole year, and from thence till the said sum of two hundred pounds so forfeited as aforesaid, shall be fully paid and satisfied.”

† *Stat.* 90. By 6. Geo. 2. c. 35. s. 30. “ Provided nevertheless, that any person who shall think him or herself aggrieved by the judgment or determination of such justices in any of the cases aforesaid, shall have liberty to appeal to the next quarter-sessions to be held for the county, city, or place where such judgment or determination shall be made or given, and that the judgment to be given by the justices of the next quarter-sessions shall be final.” Appeal to the quarter-sessions; whose determination shall be final.

† *Stat.* 91. By 6. Geo. 2. c. 35. s. 32. it is further enacted, “ That this act shall be deemed and taken to be a publick act, of which all judges and justices are to take notice; and if any action or suit shall be brought against any person for what he shall do in pursuance of this act, such action or suit shall be commenced within six months, and not afterwards; and such persons shall and may

Publick act.
Limitation of actions.

" plead the general issue, and give this act and the special matter in evidence."

penal. penalty
on any offence
against this
act;

† Sect. 92. By 12. Geo. 2. c. 28. which RECITES, " That great difficulties had arisen upon the methods of conviction of the offenders against the said acts of parliament," IT IS ENACTED, " That if any person or persons shall erect, set up, continue, or keep any office or place, under the denomination of a sale or sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards or dice; or shall make, print, advertise, or publish, or cause to be made, printed, advertised or published, proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by chances of the prizes in some public lottery or lotteries established or allowed by act of parliament, or shall deliver out, or cause or procure to be delivered out, tickets to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever; such person or persons, and every or either of them, shall, upon being convicted thereof before any one justice of the peace for any county, riding, or division, or before the mayor, or other justice or justices of the peace for any city or town corporate, upon the oath or oaths of one or more credible witness or witnesses (which said oaths the said justices of the peace, and mayor, are hereby authorized, empowered and required to administer), or upon the view of such justice or justices, or the mayor, justice or justices for any city or town corporate, or on the confession of the party or parties accused; shall forfeit and lose the sum of two hundred pounds, to be levied by distress and sale of the offender's goods, by warrant under the hands and seals of one or more justice or justices of the peace of such county, riding, division, city or town, where the offence shall be committed; which said forfeitures, when recovered, after deducting the reasonable charges of such prosecution, shall go and be applied, one third thereof to the informer, and the remaining two thirds to the use of the poor of the parish where such offence shall be committed, excepting the said two thirds of such forfeitures

the same how
to be levied
and applied.

" which

“ which shall be incurred by, and recovered upon, any
 “ person or persons within the city of *Bath*, which said
 “ two thirds shall go and be applied to and for the use and
 “ benefit of the poor residing within the hospital or infir-
 “ mary lately erected for the benefit of poor persons resort-
 “ ing to the said city for the benefit of the mineral waters,
 “ after deducting the charges of conviction as aforesaid.”

† *Sect.* 93. By 12. Geo. 2. c. 28. s. 2. it is enacted, Games within intent of the act.
 “ That the games of the ace of hearts, pharaoh, basset,
 “ and hazard are, and are hereby declared to be, games or
 “ lotteries by cards or dice within the intent and mean-
 “ ing of the preceding statutes; and that all and every
 “ person or persons who shall set up, maintain, or keep
 “ the said games of the ace of hearts, pharaoh, basset, and
 “ hazard, shall be subject and liable to all and every the
 “ penalties and forfeitures in and by this act inflicted upon
 “ any person or persons who shall erect, set up, continue,
 “ or keep any of the said games or lotteries in this present
 “ act mentioned; and shall be prosecuted and convicted,
 “ and the penalties and forfeitures shall be sued for and re-
 “ covered, in like manner as the said penalties and for-
 “ feitures are by this act directed to be sued for and reco-
 “ vered.”

† *Sect.* 94. By 12. Geo. 2. c. 28. s. 3. it is enacted, 50l. penalty on the adventurers.
 “ That all and every person and persons who shall be ad-
 “ venturers in any of the said games, lottery or lotteries,
 “ sale or sales; or shall play, set at, stake, or punt at either
 “ of the said games of the ace of hearts, pharaoh, basset,
 “ and hazard, and shall be thereof convicted in such
 “ manner and form as in and by this act is prescribed;
 “ every such person or persons shall forfeit and lose the
 “ sum of fifty pounds, to be sued for and recovered as
 “ aforesaid.”

† *Sect.* 95. By 12. Geo. 2. c. 28. s. 4. it is enacted, Sales by lotte-ries void;
 “ That all and every such sale and sales of houses, lands,
 “ advowsons, presentations to livings, plate, jewels, ships,
 “ goods, or other things, by any game, lottery or lotteries,
 “ machine, engine, or other device whatsoever, depending
 “ upon, or to be determined by chance or lot, shall and
 “ are hereby declared to be void to all intents and purposes
 “ whatsoever: and all such houses, lands, advowsons, pre-
 “ sentations to livings, plate, jewels, ships, goods, or other and lands, &c. forfeited.
 “ things, set up and exposed to sale in manner and form
 “ aforesaid, shall be forfeited to such person or persons
 “ who shall sue for the same by action, bill, plaint, or
 “ information, in any of his majesty's courts of record, or

“ at the assizes for any county where the offence shall be
 “ committed ; in which action, bill, plaint, or information,
 “ no essoin, protection, wager of law, or more than one
 “ imparlance shall be allowed.”

Appeal,

† *Stat.* 96. By 12. Geo. 2. c. 28. s. 5. it is provided,
 “ That if any person or persons shall think him, her, or
 “ themselves aggrieved by the judgment or determination
 “ of any justice or justices of the peace, or mayor as afore-
 “ said, upon any conviction of or for any of the offences
 “ in this act ; such person or persons may appeal from the
 “ said judgment of the said justice or justices, or mayor, to
 “ the next general quarter sessions of the peace for the said
 “ county, riding, division, city, or place where such per-
 “ son or persons was or were convicted ; but the person
 “ and persons so appealed shall, and he, she, and they are
 “ hereby directed to give reasonable notice to the prosecu-
 “ tor or prosecutors of such person or persons as shall so
 “ appeal, of such his, her, or their intention of bringing
 “ and prosecuting such appeal, and shall enter into a re-
 “ cognizance before some justices of the peace for the coun-
 “ ty, riding, division, city or place wherein the conviction
 “ or judgment was made or given, with two sufficient
 “ sureties, on condition to try such appeal at the next
 “ quarter-sessions which shall be held in and for the county,
 “ riding, division, city, or place wherein such conviction
 “ or judgment was made or given, next and immediately
 “ after the bringing such appeal ; and every such appeal and
 “ appeals shall, by the court at the said next general quar-
 “ ter-sessions, to which such appeal and appeals is or are
 “ made, be then examined, and the matter then finally
 “ heard and determined, and not afterwards ; and in case
 “ such judgment, determination, or conviction, as afore-
 “ said, shall be then and there affirmed, the party appeal-
 “ ing shall pay unto the prosecutor or prosecutors his,
 “ her, or their treble costs ; and such prosecutor and pro-
 “ secutors shall have such remedy for the same, as any de-
 “ fendant or defendants hath or have for costs of suit in
 “ any other cases by law.”

Convictions.

† *Stat.* 97. By 12. Geo. 2. c. 28. s. 6. it is provided,
 “ That no such conviction made, or judgment given as
 “ aforesaid by this act, shall be set aside by the said court
 “ of quarter-sessions for want of form, in case the facts al-
 “ leged in the said conviction shall be proved to the sa-
 “ tisfaction of the said court ; nor shall such conviction or
 “ judgment be removed or removable by *certiorari*, or any
 “ other writ or process whatsoever, into any of his ma-
 “ jesty's courts of record at *Westminster*, until such order

“ or other proceedings shall have been first removed to,
 “ and judgment and determination given and made there-
 “ upon, by such court of quarter-sessions as aforesaid.”

† Sect. 98. By 12. Geo. 2. c. 28. s. 7. it is also provided, Record re-
 “ That no writ of *certiorari*, or other process, shall issue or moveable up-
 “ be issuable to remove the record of any such conviction on 100l. secu-
 “ from the said court of quarter-sessions, or to remove rity.
 “ any order or other proceedings taken or made by the
 “ said court of quarter-sessions upon, touching or con-
 “ cerning such conviction, into any of his majesty's courts
 “ of record at *Wesminster*, until the party or parties against
 “ whom such conviction shall be made, before the allow-
 “ ance of such writ of *certiorari*, or other process, shall
 “ find two sufficient sureties to become bound to the pro-
 “ secutor in the sum of one hundred-pounds, with condi-
 “ tion to prosecute the same with effect within six calen-
 “ dar months, and to pay unto the prosecutor or prosecu-
 “ tors his, her, or their treble costs and charges, in case
 “ such order or conviction shall be affirmed.”

† Sect. 99. By 12. Geo. 2. c. 28. s. 8. it is enacted, Offenders not
 “ That if any person or persons who shall be convicted of able to pay the
 “ erecting, setting up, maintaining, or keeping any of the penalties, to
 “ said lotteries, or the said games of the ace of hearts, pla- be imprisoned.
 “ raoh, basset, or hazard, or therein or in either of them
 “ shall adventure, and shall not have sufficient goods and
 “ chattels whereon to levy the penalties inflicted by this
 “ act, or shall not immediately pay the said penalties, or
 “ give security for the same; it shall and may be lawful for
 “ the said justice or justices, before whom such person
 “ shall be convicted as aforesaid, to commit such person
 “ or persons to the common gaol of the county, riding,
 “ division, city, or place where such offence shall be com-
 “ mitted, there to continue and remain for any time not
 “ exceeding six months.”

† Sect. 100. By 12. Geo. 2. c. 28. s. 9. it is also enacted, Penalty on
 “ That if any justice of the peace, or any other justice neglect of jus-
 “ herein-before described, or mayor of any corporation, tices or may-
 “ shall neglect or refuse to do what is required of him and ors,
 “ them by this act; such justices and mayors so neglecting
 “ or refusing shall respectively forfeit and pay the sum of
 “ ten pounds for each offence; one moiety whereof to be
 “ paid to any person or persons who shall sue for the same,
 “ and the other moiety thereof to the poor of the parish or
 “ place where such offence shall be committed; and shall
 “ be recovered with full costs of suit, by action, bill,
 “ plaint, or information, in any of his majesty's courts of
 “ record,

"record, or at the assizes for any county; in which action, bill, plaint, or information, no essoin, protection, or wager of law, nor more than one imparlance shall be allowed; such prosecution being commenced within six months next after such refusal of such justices or mayor."

This act not to hinder any games in palaces where the king resides;

† Sect. 101. By 12. Geo. 2. c. 28. s. 10. it is provided, "That nothing in this act, or in any former acts against gaming contained, shall extend to prevent or hinder any person or persons from gaming or playing at any of the games in this or in any of the said former acts mentioned within any of his majesty's royal palaces, where his majesty, his heirs or successors shall then reside."

nor to affect the right to my lands &c. held by lot.

† Sect. 102. By 12. Geo. 2. c. 28 s. 11. it is also provided, "That nothing herein contained shall extend, or be any ways construed, deemed, or taken to extend, or in any sort to affect or prejudice any estate or interest in, out of, or to any manors, honours, royalties, lands, tenements, advowsons, presentations, rents, services, and hereditaments whatsoever, which shall or may at any time or times hereafter be according to the laws now in being legally allotted to, or held by, or by means of any allotment or partition by lots; but that all persons who now are, or that shall hereafter become, really and truly seised as part-owners, joint-tenants, and tenants in common of any manors, honours, royalties, lands, tenements, advowsons, presentations, rents, services, and hereditaments, shall, and he, she, and they, and his, her, and their heirs and assigns is, and are hereby made and continued capable to accept and take such estates and interest, and parts therein, in such and the like manner, and to such and the like uses, as he, she, or they might, would, or could, have done by, or by virtue, or in consequence of any lot, scroll, chance or allotment whatsoever, had this present act never been made: any thing herein contained to the contrary thereof notwithstanding."

Limitation of actions.

† Sect. 103. By 12. Geo. 2. c. 28. s. 12. it is further enacted, "That if any suit or action shall be commenced or prosecuted against any person or persons for any thing done in pursuance of this act, every such suit or action shall be commenced within three calendar months next after the fact was committed, and not afterwards; and shall be laid or brought in the county, city, or place where the cause of action shall arise, and not elsewhere; and the defendant and defendants therein shall and may plead

“ plead the general issue, and give this act and the special General issue.
 “ matter in evidence at the trial to be had thereupon, and
 “ that the same was done in pursuance of, or by the au-
 “ thority of this act; and if the plaintiff or plaintiffs shall
 “ become nonsuited, or discontinue his, her, or their ac-
 “ tion or actions, suit or suits, or if upon demurrer judg-
 “ ment shall be given against the plaintiff or plaintiffs; the
 “ defendant or defendants shall and may recover treble costs, Treble costs,
 “ and have like remedy for the same, as any defendant or
 “ defendants hath or have for costs in any other cases by
 “ law.”

† Sect. 104. By 13. Geo. 2. c. 19. s. 9. IT IS RECITED,
 “ That whereas a good and wholesome law was made in
 12. Geo. 2. for the more effectual preventing excessive and 12. Geo. 2. c. 22,
 “ deceitful gaming; but, contrary to the true intent and mean-
 “ ing thereof, some fraudulent and deceitful games have been
 “ invented, and a certain game called passage is now daily
 “ practised and carried on, to the ruin and impoverishment
 “ of many of his majesty’s subjects;” it is therefore ENACTED,
 “ That the said game of passage, and all and every other Game of pas-
 “ game, and games invented, or to be invented, with one sage, and other
 “ or more die or dice, or with any other instrument, en- games with
 “ gine, or device, in the nature of dice, having one or dice, prohi-
 “ more figures or numbers thereon (backgammon and the bited. See
 “ other games now played with the backgammon tables farther, 29.
 “ only excepted), are and shall be deemed to be games or Geo. 2. c. 7.
 “ lotteries by dice, within the intent and meaning of the
 “ preceding statute; and all and every person and per-
 “ sons who shall set up, maintain, or keep any office,
 “ table, or place (save and except as in the preceding
 “ statute is provided and declared), for the said game of
 “ passage, or for any other such game or games as afore-
 “ said (backgammon and the other games now played with
 “ the backgammon tables only excepted), shall severally
 “ forfeit, be subject and liable to, all and every the penal-
 “ ties and forfeitures in and by the preceding statute in-
 “ flicted upon any person or persons who shall erect, set
 “ up, continue, or keep any of the games or lotteries
 “ in the preceding statute mentioned; and all and every
 “ person or persons who shall play, set at, stake, or
 “ adventure at the said game of passage, or at any other
 “ such game, as aforesaid (backgammon and the other
 “ games now played with the backgammon tables only
 “ excepted), save and except as in the preceding statute
 “ is provided and declared, he and they respectively
 “ shall severally forfeit, be subject and liable to all and
 “ every the penalties and forfeitures in and by the pre-
 “ ceding statute inflicted upon any person or persons
 “ who

" who shall play, set at, stake, or adventure at any of the
 " said games in the preceding statute mentioned; and
 " all and every such offenders respectively shall be prose-
 " cuted and convicted, and the several penalties and forfei-
 " tures shall be sued for and recovered and disposed of
 " in like manner, and to such uses as the several penal-
 " ties and forfeitures in either of such cases are by the
 " preceding statute directed to be sued for, and recovered,
 " and disposed of.

Double costs.

+ Sect. 105. By 13. Geo. 2. c. 19. s. 10. it is further
 enacted, " That in any action, bill, plaint, or information
 " to be brought or commenced by virtue of this act, no es-
 " soin, protection, wager of law, or more than one im-
 " parlance, shall be allowed; and that over and above the
 " penalties and forfeitures to be recovered by virtue of this
 " act, the plaintiff or informer shall recover his or her
 " double costs."

No person
 shall keep a
 place for play-
 ing roly-poly,
 or other game
 with cards or
 dice.

+ Sect. 106. By 18. Geo. 2. c. 34. s. 1. IT IS RECITED,
 " That whereas, notwithstanding the many good and
 " wholesome laws now in being for preventing excessive and
 " deceitful gaming, many persons of ill fame and reputation,
 " who have no visible means of subsistence, do keep houses,
 " rooms, and other places for playing, and do permit per-
 " sons therein to play at cards, dice, and other devices, for
 " large sums of money, by means whereof divers young and
 " unwary persons, and others, are drawn in to lose the great-
 " est part, and sometimes all their substance; and it frequent-
 " ly happens they are thereby reduced to the utmost neces-
 " sities, and betake themselves to the most wicked courses,
 " which end in their utter ruin: and whereas a certain per-
 " nicious game called roulet, or roly-poly, is daily practised,
 " and the laws now in being have, by experience, been found
 " ineffectual to put a stop to such pernicious practices:" it is
 " therefore ENACTED, " That no person or persons, of what
 " condition soever, shall keep any house, room, or place
 " for playing, or permit or suffer any person or persons
 " whatsoever, within any such house, room, or place, to
 " play at the said game of roulet, otherwise roly-poly, or
 " at any other game, with cards or dice, already prohibited
 " by the laws of this realm; and in case any person or per-
 " sons whatsoever shall keep any such house, room, or
 " place for playing, or permit or suffer any person or per-
 " sons as aforesaid to play at the said game of roulet, other-
 " wise roly-poly, or at any other game, with cards or
 " dice already prohibited by law, such person or persons
 " so offending shall incur the pains and penalties, and be
 " liable to such prosecution as is directed in and by the
 " statute 12. Geo. 2. c. 28."

+ Sect.

† *Sect. 107.* By 18. Geo. 2. c. 34. f. 2. it is enacted, Persons playing shall incur the penalties of 12. Geo. 2. c. 28.
 “ That if any person or persons whatsoever shall play at the
 “ said game of roulette, otherwise roly-poly; or at any game
 “ or games with cards or dice already prohibited by law,
 “ every such person or persons so offending shall also in-
 “ cur the pains and penalties, and be liable to such pro-
 “ secution as is directed by the statute 12. Geo. 2. c. 28.”

† *Sect. 108.* By 22. Geo. 3. c. 47. f. 1. IT IS RECITED,
 “ That whereas all lotteries, except such as are permitted by
 “ act of parliament, are contrary to law, and punishable under
 “ various statutes of this realm: and whereas, to prevent the
 “ abuse of such lotteries as for the time being are established
 “ by act of parliament, it is fit that there should be a perma-
 “ nent regulation both of the keepers of lottery offices and of
 “ the sale of lottery tickets: and whereas it is become a com-
 “ mon practice in *London*, and other places of *Great Britain*,
 “ to have offices for selling tickets in lotteries established in
 “ *Ireland* by *Irish* acts of parliament: and whereas it is thought
 “ expedient to allow of the selling such *Irish* tickets within
 “ *Great Britain*, on the terms of having the sale of them under
 “ the same regulations as are herein-after appointed for tickets
 “ in lotteries established by *British* acts of parliament:” AND
 “ ENACTED, “ That it shall be lawful to buy and sell, within
 “ all parts of *Great Britain* (except within the universities
 “ of *Oxford* and *Cambridge*), any ticket or tickets in any
 “ lottery or lotteries now authorised, or hereafter to be au-
 “ thorised, by any *Irish* act of parliament, or any share or
 “ shares of any ticket or tickets in any such *Irish* lottery or
 “ lotteries, in the same manner as if such *Irish* tickets were
 “ tickets in a lottery established by an act of the parliament
 “ of *Great Britain*.”

Irish tickets
 may be sold,
 in the same
 manner as
British
 tickets.

† *Sect. 109.* By 22. Geo. 3. c. 47. f. 2. “ No person or
 “ persons shall, publicly or privately, open, set up, exercise, No person to keep a lottery office without taking out a licence from the stamp office.
 “ or keep, by himself or herself, or any other person or per-
 “ sons, any office for buying, selling, or otherwise dealing
 “ in any tickets, or for registering the numbers of any
 “ tickets in the lottery authorised by any act of the present
 “ session of parliament, or in any lottery which shall be
 “ authorised by any future act of parliament; or in any
 “ lottery now established, or hereafter to be established, by
 “ any *Irish* act of parliament; or shall, by writing, print-
 “ ing, or otherwise, publish the setting up or using any
 “ such office, without first taking out a licence for that
 “ purpose from the commissioners for managing the duties
 “ upon stamped vellum, parchment, and paper, for the time
 “ being, in manner herein-after mentioned.”

† *Sect.*

Each licence
to cost 50*l*

† *Seet. 110.* By 22. Geo. 3. c. 47. f. 3. "The said commissioners, or any three of them, are hereby empowered and required, by writing under their hands and seals, to grant a licence for an office for selling and dealing in lottery tickets authorised by law, to all and every person and persons applying for the same; but, previously to the delivery of any such licence, and before it shall have any effect, there shall be paid, over and above all other payments to which the person or persons taking out such licence may be respectively liable by any other act of parliament, whether as brokers or otherwise, the sum of fifty pounds for every such licence, at the stamp office, at the time such licence shall be delivered to the person or persons applying for the same; and every such sum of fifty pounds shall be applied towards defraying the expences of the stamp office in executing this act, and otherwise in manner herein-after prescribed."

Licence to set
forth the
name of the
person taking
out the same,
&c. and to
continue in
force for one
year.

† *Seet. 111.* By 22. Geo. 3. c. 47. f. 4. "Every such licence shall set forth the true name and place of abode of the person or persons taking out the same, and also the particular house or place where such business of dealing in lottery tickets shall be carried on; and such licence shall continue in force for twelve calendar months from the date thereof, and no longer; and every person acting or dealing in any of the matters therein contained after the expiration of such licence, without the authority of a new licence, to be taken out in the same manner, shall be considered in every respect as an unlicensed person."

No licence to
be granted for
any office in
Oxford or
Cambridge.

† *Seet. 112.* But by 22. Geo. 3. c. 47. f. 5. it is provided, "That no licence shall be granted for having any such lottery office as aforesaid within the universities of *Oxford* and *Cambridge*, or either of them; and if any licence shall be granted for any such lottery office within either of the said universities, it shall be void and of no effect, and the person or persons acting under such licence shall be liable to the same penalty as an unlicensed person."

Persons keep-
ing any office
contrary to
this act, to
suffer 10*l*

† *Seet. 113.* By 22. Geo. 3. c. 47. f. 6. it is further enacted, "That all and every person and persons who shall open, set up, or keep, any office for buying, selling, or otherwise dealing in, such lottery tickets as aforesaid, or any shares thereof, or for registering the numbers of such tickets, without the authority of such licence as aforesaid, or in any other house or place besides that named in the licence which he, she, or they, shall have, or in any other manner contrary to such licence, or to the intent and
" meaning

“ meaning of this present act, shall forfeit, for every such offence, the sum of one hundred pounds.”

† *Stat.* 114. By 22. Geo. 3. c. 47. s. 7. “ All and every person and persons to be licensed under this act, shall cause the words, *Licensed to deal in lottery tickets*, to be written or expressed, in legible characters, upon or near the door in the front of his, her, or their office, shop, or other place for selling of tickets, to denote that such person or persons is or are a dealer or dealers in lottery tickets, and liable to take out a licence; and if any person or persons shall presume to sell or deal in such lottery tickets as aforesaid without complying with the said provision, he, she, or they, so offending, shall, for every day in which such offence shall be committed, forfeit and pay the sum of twenty pounds.”

Certain words to be written on the front of each licensed office.

† *Stat.* 115. By 22. Geo. 3. c. 47. s. 8. “ If any person or persons whatsoever shall forge or counterfeit, or cause to be forged or counterfeited, or assist in forging or counterfeiting, any licence authorized to be made by this act for the purpose aforesaid, or shall fraudulently alter, or cause to be altered, or assist in altering, any such licence as shall be really granted under this act, or shall knowingly make use of any such forged, counterfeited, or altered licence, such person or persons shall, for every such offence, forfeit the sum of five hundred pounds, one moiety thereof to his majesty, his heirs and successors, and the other moiety to him that shall prosecute or sue for the same, to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at *Westminster*, in which no essoin, protection, wager of law, or more than one imparlance, shall be allowed; and shall also be subject to imprisonment for such term, not exceeding six months, as the court in which the party offending shall be convicted shall appoint.”

Penalty on forging or altering any licence.

† *Stat.* 116. But by 22. Geo. 3. c. 47. s. 9. it is provided, “ That all and every the person and persons to whom any such licence as aforesaid shall be granted, shall, at the time of receiving such licence, give security by bond to his majesty, his heirs and successors, in the sum of one thousand pounds, with two or more sufficient sureties, to be approved of by the said commissioners, or any three or more of them; of which bond the condition shall be, that if such person or persons shall well and truly conform and observe all the regulations and provisions of this act, so far as he, she, or they, shall be concerned therein, such bond shall be void, but otherwise to be and

All persons taking out licences are to give bond to his majesty.

“ remain

“ remain in full force ; and the said commissioners, or any
 “ three or more of them, are hereby authorised to take the
 “ said bond ; and if, at the end of the year for which any
 “ such licence shall be granted, it shall appear, to the satis-
 “ faction of the said commissioners, or any three or more
 “ of them, that the person or persons entering into any such
 “ bond hath or have acted in conformity to the directions
 “ and provisions of this act, during the year for which the
 “ licence shall be granted, then the said commissioners, or
 “ any three or more of them, are hereby authorised to cause
 “ such bond to be delivered up and cancelled : but other-
 “ wise the said commissioners shall (unless they shall see
 “ sufficient reason to forbear from prosecution) cause every
 “ such bond to be prosecuted.”

Licensed per-
 sons convicted
 of any offence
 against this
 act, shall for-
 feit their li-
 cence, &c.

† *Sect. 117.* And by 22. Geo. 3. c. 47. s. 10. it is also
 provided, “ That if any person or persons, to whom any
 “ such licence as aforesaid shall be granted, shall be con-
 “ victed of any offence against this act, whether on prose-
 “ cution of the bond to be given in manner aforesaid, or
 “ on prosecution for any penalty whatever under this act,
 “ such conviction shall operate as a forfeiture of such li-
 “ cence, and from thenceforth the same shall be void ; and
 “ the said commissioners may, if they think fit, refuse to
 “ grant to the person or persons so convicted a licence in
 “ future.”

No business
 to be trans-
 acted before
 eight in the
 morning, nor
 after eight in
 the evening.

† *Sect. 118.* By 22. Geo. 3. c. 47. s. 11. it is further
 enacted, “ That no such office for lottery tickets, and so to
 “ be licensed as aforesaid, shall be open for the transaction
 “ of any business, under such licence, before the hour of
 “ eight of the clock in the morning, nor after the hour of
 “ eight of the clock in the evening, except on the evening
 “ of the *Saturday* preceding the drawing of any lottery ;
 “ and if any such office or place shall be wilfully kept open,
 “ in point of time, contrary to this act, the person or per-
 “ sons licensed to keep such office shall, for every such of-
 “ fence, forfeit fifty pounds.”

Penalty on
 selling any
 share less
 than a six-
 teenth.

† *Sect. 119.* By 22. Geo. 3. c. 47. s. 12. after reciting,
 “ that the dividing of tickets in a lottery into very small
 “ shares has been found mischievous,” it is further enacted,
 “ That if any person or persons so to be licensed as afore-
 “ said, shall sell any smaller share or shares of any ticket or
 “ tickets, in any lottery, than a sixteenth, or publish any
 “ proposals for selling any smaller share or shares, every
 “ such person shall, for every offence in so doing, forfeit
 “ the sum of fifty pounds ; and further, the contract on
 “ every

" every such sale of a smaller share than a sixteenth shall be void in law."

† *Sect. 120.* By 22. Geo. 3. c. 47. s. 13. "in order to prevent all adventuring with lottery tickets in any such lottery as aforesaid, other than such as shall necessarily arise from the real and actual sale of such tickets, and of such shares thereof as are hereby permitted," it is further enacted, "That it shall not be lawful for any person or persons to sell the chance or chances of any ticket or tickets in any such lottery as aforesaid, for a day, or any less time than the whole time of drawing in any such lottery, or to insure for or against the drawing of any such ticket or tickets, or to receive any money or goods in consideration of any agreement to repay any sum or sums, or to deliver the same or other goods, if any such ticket or tickets should prove fortunate or unfortunate, or on any other chance or event relative to the drawing of any such ticket or tickets, whether as to their being drawn fortunate or unfortunate, or the time of their being drawn, or otherwise howsoever; or under any pretence, device, form, denomination, or description whatsoever, to promise or agree to pay any sum or sums, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person or persons, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any such ticket or tickets, or to publish any proposal for any of the purposes aforesaid; and if any person or persons shall offend against this act in any of the matters aforesaid, he, she, or they, shall, for every offence, forfeit and pay the sum of fifty pounds; and further, the contract in every such case shall be void."

Limitation of the sale of chances, &c.

† *Sect. 121.* By 22. Geo. 3. c. 47. s. 14. "to prevent selling shares of tickets by any persons except the real proprietors thereof, and selling shares of any ticket beyond the number of shares equal to the whole thereof," it is further enacted, "That it shall not be lawful for any person or persons to sell any share or shares of any ticket or tickets in any such lottery as aforesaid, without being the owner or owners of such ticket or tickets at the time of selling such share or shares thereof, or to sell any share of any ticket beyond such number of shares as, being added together, shall be equal to the whole of such ticket; and all and every person and persons who shall offend against this act in either of those respects, shall forfeit the sum of fifty pounds."

Penalty on persons selling shares of tickets not their property.

† *Sect.*

Commissioners to establish an office in London or Westminster, where tickets shall be deposited before they are stamped.

† *Sect. 122.* By 22. Geo. 3. c. 47. s. 15. "the more effectually to prevent abuses in the selling of shares of lottery tickets," it is further enacted, "That the said commissioners, or any three or more of them, shall, before the time herein-after appointed for the commencement of this act, establish an office, in the city of London or Westminster, for the deposit of tickets intended to be sold in shares; and every ticket in any such lottery as aforesaid, before it shall be divided into or sold in shares, shall be brought to the said office, and shall be there deposited and left with the receiver-general of his majesty's stamp duties, or some person or persons to be appointed by him to receive the same, and who is and are hereby authorised and required to receive the same."

All agreements for shares to be on stamped paper, &c.

† *Sect. 123.* By 22. Geo. 3. c. 47. s. 16. "Every agreement for the sale of a share of any such ticket or tickets so to be deposited as aforesaid, shall be expressed on a piece of written or printed paper, vellum, or parchment, and shall be impressed with some mark, device, or stamp, to be from time to time prescribed by the said commissioners, or any three or more of them, for that purpose; but the said receiver-general, or the person or persons so to be appointed by him, shall not deliver out, impressed with any mark, device, or stamp, more shares for any one such ticket than, being added together, shall amount to the value of a whole ticket, nor shall so impress with any mark, device, or stamp, any smaller share than a sixteenth, or any share of a ticket other than such as is permitted by this act; and if such receiver-general, or the person or persons so to be appointed by him, shall deliver out any share, other than such as he or they are hereby authorised to have, impressed with any such mark, device, or stamp, he or they shall, for every such offence, forfeit fifty pounds."

Receiver-general to give a receipt for tickets brought to be shared.

† *Sect. 124.* By 22. Geo. 3. c. 47. s. 17. "The said receiver-general of his majesty's stamp duties, or such person or persons, so to be appointed by him to receive tickets to be divided into shares, shall, upon the receipt of any such ticket, or any number of such tickets as aforesaid, give a receipt in writing for the same; which receipt shall express the day of receiving the ticket or tickets, the lottery to which the ticket or tickets shall belong, the number or numbers of the ticket or tickets so received, and the name or names of the proprietor or proprietors thereof; and also that such ticket or tickets is or are received in pursuance of this act, and doth or do accordingly remain in the hands of the said receiver-general,

“ral, or such person or persons to be appointed by him
“to receive the same, to be disposed of as is hereby di-
“rected.”

† *Seet. 125.* By 22. Geo. 3. c. 47. f. 18. “Each and
“every such ticket in the said lottery, so to be deposited
“with the said receiver-general for the purpose of being af-
“terwards sold into shares, shall remain and continue in
“the custody and possession of the said receiver-general, or
“of the person or persons so to be appointed by him as
“aforesaid, until the expiration of three days after the
“drawing of such ticket in the said lottery; and, on the
“expiration of three days next after the drawing of such
“ticket in the said lottery, such ticket shall be returned to
“the owner or owners thereof, his, her, or their agent or
“agents, assignee or assignees, upon producing the receipt
“of the said receiver-general, or of such other person or
“persons so to be appointed by him as aforesaid, for the
“same: and in case any such ticket, so to be deposited as
“aforesaid, shall remain unclaimed at the end of two years
“from the day of the drawing thereof, the money (if any)
“to arise by the sale of such ticket shall be retained in the
“hands of the said receiver-general for the time being, and
“be applied in defraying the expences of the stamp office
“in executing this act, and otherwise in such manner as is
“herein-after mentioned.”

All such tick-
ets to remain
in his custody
three days af-
ter they are
drawn.

† *Seet. 126.* By 22. Geo. 3. c. 47. f. 19. “A book or
“books shall be kept by the said receiver-general, or the
“person or persons so to be appointed by him as aforesaid,
“who shall truly and fairly enter and register in such book
“or books the number of every lottery ticket which shall
“be deposited in the said office in pursuance of this act, to-
“gether with the name or names of all and every such per-
“son and persons who shall so deposit such ticket, and also
“the number of shares into which each such ticket shall be
“so divided as aforesaid; and any person shall and may,
“from time to time, and at all seasonable times, resort to
“and inspect such book or books, on payment of the sum
“of two pence to the said person or persons so to be ap-
“pointed by the said receiver-general as aforesaid; and the
“money arising from such payment shall be paid and applied
“in defraying the expences of the stamp office in executing
“this act, and otherwise in manner herein-after specially
“provided.”

The numbers
of all tickets
deposited in
the office to
be entered in
a book, with
the names of
the owners,
and the num-
ber of shares
into which
they are di-
vided.

† *Seet. 127.* By 22. Geo. 3. c. 47. f. 20. “Upon the
“drawing and depositing of any lottery ticket at or in the
“said office, with the said receiver-general, or such person

Two-pence for each share to be paid to the officer on depositing tickets in the office.

“ or persons so to be appointed as aforesaid, for the purposes aforesaid, the person or persons who shall so leave and deposit the same shall pay to the said receiver-general, or the person or persons so to be appointed by him as aforesaid, for each share into which every such ticket shall be divided by the said officer or officers, the sum of two-pence; and the monies arising from such fee, to be paid as aforesaid, shall be accounted for, from time to time, and shall be paid and applied towards the expence of keeping such office for the deposit of lottery tickets as aforesaid, or in defraying any other expences of the stamp office in the execution of this act, and otherwise in such manner as is herein-after specially prescribed.”

Penalty on selling any share of a ticket without a stamp.

† *Stat. 128.* By 22. Geo. 3. c. 47. s. 21. “ If any person or persons shall, at any time or times, sell, or agree to sell, any share or shares of any ticket or tickets in any such lottery as aforesaid, otherwise than by a written or printed agreement, on a piece of paper, vellum, or parchment, stamped and marked by such officer or officers, and in such manner as by this act is before prescribed, he, she, or they, so offending, shall, for every such offence, forfeit the sum of fifty pounds.”

Penalty on forging or altering receipts, or using the same with a fraudulent intention.

† *Stat. 129.* By 22. Geo. 3. c. 47. s. 22. “ If any person or persons shall forge or counterfeit, or cause to be forged or counterfeited, or assist in forging or counterfeiting, any such receipt as is by this act required to be given on deposit of any ticket or tickets to be divided in shares, or any stamp or mark by this act required to be put on any share or shares of any ticket or tickets; or shall alter, or cause to be altered, or assist in altering, any such receipt or stamped share, whether by adding or taking away any word, letter, or figure, in such receipt or stamped share, or shall fraudulently make use of any such forged, counterfeited, or altered receipt or stamped share; all and every such person or persons, being convicted of any of the offences before mentioned, shall be adjudged guilty of felony, and shall suffer as a felon.”

All money received under this act to be paid to the receiver-general.

† *Stat. 130.* By 22. Geo. 3. c. 47. s. 23. “ All fees and sums of money which shall, under this act, be received at the stamp office, or by any officer or officers there, in the execution of the trust reposed in such officer or officers, and of which the application is not herein before directed, shall be paid into the hands of the receiver-general of the said office for the time being, and he shall keep a separate and distinct account thereof; and thereout shall pay the expence the said office shall be put to in executing

Application thereof.

“ executing this act, and also in defraying the expences at-
 “ tending the commission made forth for managing, direct-
 “ ing, and drawing, the lottery established by an act made
 “ in this session of parliament, intituled, *An act for raising a*
 “ *certain sum of money by way of annuities, and for establishing*
 “ *a lottery*, in such manner as by the said commissioners, or
 “ any three or more of them, shall, from time to time, be
 “ appointed; but subject, nevertheless, to such rules and
 “ orders, in respect to the same, as shall be given to the said
 “ commissioners, from time to time, by the commissioners
 “ of the treasury, or any three or more of them, or the lord
 “ high treasurer for the time being; and as to the residue of
 “ such sums of money, the said receiver-general shall pay
 “ such residue into the receipt of the exchequer, at such
 “ time and in such manner as the duties now charged on
 “ stamped vellum, parchment, and paper, are so directed to
 “ be paid: and in the office of the auditor of the said re-
 “ ceipt of the exchequer there shall be provided and kept a
 “ book or books, in which all the monies paid into the said
 “ receipt under this act shall be entered separate and apart
 “ from all other monies paid or payable to his majesty, his
 “ heirs or successors, upon any other account; and such
 “ monies so paid into the said receipt of the exchequer under
 “ this act, shall, from time to time, be reserved for the dis-
 “ position of parliament, and shall not be issued but by
 “ authority of parliament.”

† *Stat. 131.* By 22. Geo. 3. c. 47. s. 24. “ All penalties *Penalties.*
 “ which shall be incurred by any person or persons offend-
 “ ing against this act (except where a different mode of pro-
 “ secution is herein-before specially prescribed) shall be re-
 “ coverable before any two or more of his majesty’s justices
 “ of the peace for the county, city, town, or other division,
 “ in which the offence shall be committed, upon proof of
 “ the offence by the oath or oaths of one or more credible
 “ witness or witnesses, or on confession of the offender;
 “ and one moiety of every such penalty shall belong to the
 “ informer or informers prosecuting for the same, and the
 “ other moiety to his majesty, his heirs and successors; and
 “ in case of non-payment of any such penalty, it shall be
 “ levied by distress and sale of the offender’s goods and
 “ chattels, by warrant under the hands and seals of such
 “ justices; and the overplus of the money raised, after de-
 “ ducting the penalty and the expences of the distress and
 “ sale, shall be rendered to the owner; and for want of suf-
 “ ficient distress, the offender shall be sent by such justices
 “ to the house of correction, there to be kept to hard labour
 “ for any time not exceeding six months, nor less than

“ three months, as such justices shall think proper, unless
 “ such penalty shall be sooner paid or satisfied.”

Justices may
 mitigate.
 Limitation of
 actions.

† *Seff. 132.* But by 22. Geo. 3. c. 47. s. 25. it is provided, “ That it shall and may be lawful to and for the said
 “ respective justices, where they shall see cause to mitigate
 “ or lessen any such penalty, to do so accordingly, in such
 “ manner as they in their discretion shall think fit, the rea-
 “ sonable costs and charges of the officers or informers
 “ being always allowed over and above such mitigation,
 “ and so as such mitigation do not reduce the penalty to
 “ less than one moiety thereof, over and above the said
 “ costs and charges; any thing contained in this act to the
 “ contrary notwithstanding.”

General issue.

† *Seff. 133.* By 22. Geo. 3. c. 47. s. 26. it is enacted,
 “ That no person shall be liable to any prosecution for any
 “ offence against this act, whereby any pecuniary penalty
 “ shall be incurred, unless such prosecution shall be com-
 “ menced within twelve months after commission of such
 “ offence; and if any suit or action shall be prosecuted in
 “ England, against any person or persons, for any thing done
 “ in pursuance of this act, such person or persons may plead
 “ the general issue, and give this act or the special matter
 “ in evidence, on any trial to be had thereupon, and that
 “ the same was done by authority of this act, and if a ver-
 “ dict shall pass for the defendant or defendants, or the
 “ plaintiff or plaintiffs shall become nonsuit, or discontinue
 “ his, her, or their action or actions after issue joined, or
 “ if, on demurrer or otherwise, judgment shall be given
 “ against the plaintiff or plaintiffs, the defendant or de-
 “ fendants shall recover treble costs, and have the like re-
 “ medy for the same as any defendants have by law in other
 “ cases.”

Treble costs.

Commence-
 ment of this
 act.

19. Geo. 3.
 c. 21. re-
 pealed.

† *Seff. 134.* By 22. Geo. 3. c. 47. s. 27. “ This act
 “ shall begin to have force on the twenty-fifth day of July
 “ 1782; and from and immediately after the commence-
 “ ment thereof, an act, made in the nineteenth year of his
 “ present majesty (intituled, *An act for licensing and regulating*
 “ *lottery-office keepers*), and also so much of any other act or
 “ acts made before the present session of parliament, in re-
 “ spect to the regulation either of the keepers of lottery
 “ offices or the sale of lottery tickets, shall be, and the same
 “ are, hereby repealed; but such repeal shall not operate
 “ upon, or to the prejudice of, any action, suit, or prose-
 “ cution, which shall be commenced or depending before
 “ the commencement of this act.”

† *Seff.*

† *Sec. 135.* By 27. Geo. 3. c. 1. which recites the above statutes 8. Geo. 1. c. 2. 12. Geo. 2. c. 28. and 22. Geo. 3. c. 47. it is enacted, " That all and every the said recited acts, and every article and thing in them contained, touching and concerning lotteries, and not by this act altered or repealed, or other provision made in lieu thereof, shall be duly put in execution, according to the tenor of the said recited acts, and under the penalties therein contained, to be raised, levied, and disposed of, as in and by this act is directed."

† *Sec. 136.* By 27. Geo. 3. c. 1. f. 2. " No pecuniary penalty or penalties, which shall be incurred by any person or persons offending against such parts of the said acts, or any of them, as touch and concern lotteries, shall be recovered or recoverable before any justice or justices of the peace, but shall and may be sued for by any person or persons whomsoever, at any time within six calendar months next after such offence shall be committed, and recovered by action of debt, bill, plaint, suit, or information, in any of his majesty's courts of record at *Westminster*; in which no essoin, protection, wager of law, or more than one imparlance, shall be allowed; and one moiety of the said respective penalties, when recovered, shall, in every such case, go and be applied to the use of his majesty, his heirs and successors, and the other moiety, with full costs of suit, to the person or persons who shall sue or prosecute for the same respectively; and upon every such action, bill, plaint, suit, or information, a *capias*, or other writ, shall and may issue; the first process specifying therein the amount of the penalty or penalties sued for, whereof an affidavit shall be first duly made and filed; and the defendant or defendants shall, in such case, be obliged to give sufficient bail or security, by natural-born subjects, persons naturalized, or denizens, to the person or persons to whom such *capias*, or other writ, shall be directed, to appear in the court out of which such process shall be issued, at the day of the return of such process, to answer such suit or prosecution; and shall likewise, at the time of such appearance, give sufficient bail or security, by such persons as aforesaid, in the said court, to answer and pay all the forfeitures and penalties incurred for such offence or offences, together with the costs of suit, in case he, she, or they shall be convicted thereof, or to yield his, her, or their body or bodies to prison: provided always, that the bail herein before required to be given shall, in no case, exceed the sum of five hundred pounds."

Penalties incurred under the recited acts may be sued for by any persons whomsoever, within six months.

Application of penalties.

In every action for penalties, the defendant to give bail to answer it.

Bail not to exceed 500l.

17. Geo. 2. c. 5.
recit. 4,

† *Stat. 137.* By 27. Geo. 3. c. 1. s. 3. it is recited, "That in and by an act made and passed in the seventeenth year of Geo. 2. intituled, *An Act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction*, it is enacted, that all persons playing or betting at any unlawful games or plays shall be deemed rogues and vagabonds within the true intent and meaning of that act; and whereas all lotteries not established by act of parliament in *Great Britain or Ireland* are declared to be common and public nuisances: and whereas all adventuring with lottery tickets in such lotteries as are established by act of parliament, other than by the actual sale of tickets, and of such shares thereof as are permitted by law to be sold, is wholly prohibited by the said act of the twenty-second year of the reign of his present majesty; and whereas it would tend greatly to suppress such abuses in the lottery now established, and in all future lotteries that may hereafter be established by law, if the person and persons guilty of any of the offences against this act, or such parts of the hereinbefore mentioned acts, or any of them, as touch and concern lotteries, might be punishable under the said act passed in the seventeenth year of Geo. 2. except in cases of insurances on tickets by persons actually possessed thereof, under the restrictions herein-after mentioned:" it is therefore enacted,

and extended
to person who
shall deal in
tickets with-
out taking out
a licence pur-
suant to
22. Geo. 3.
or sell chan-
ces, &c.

"That all and every person and persons who shall pub-
"lickly or privately open, set up, continue, or keep, by
"himself or herself, or by any other person or persons,
"any office, or other place for buying, selling, or other-
"wise dealing in any tickets, or any shares of tickets, in
"any lottery now established, or hereafter to be estab-
"lished, by any *British or Irish* act of parliament, or
"for registering the numbers of such tickets, without
"the authority of a licence duly obtained for that purpose
"from the commissioners for managing the duties upon
"stamped vellum, parchment, and paper, for the time
"being, in the manner in and by the said recited act of the
"twenty-second year of the reign of his present majesty
"directed: and all and every person and persons (except
"as herein-after is provided) who shall, by himself, herself,
"or themselves, or by any other person or persons, or for
"his, her, or their own account, or for or on the account,
"or as the servant, agent, or factor, of any other person or
"persons, sell, or cause or procure to be sold, the chance or
"chances of any such ticket or tickets, or any share or
"shares thereof, for a day, or part of a day, or any less
"time than the whole time of drawing in any such lottery
"then to come; or insure, or cause or procure any other
"person or persons to insure, for or against the drawing of
"any such ticket or tickets; or shall receive any money or
"goods whatsoever, in consideration of any agreement or
"promise

" promise to repay any sum or sums of money, or to deliver
 " the same, or any plate, jewels, or other goods whatsoever,
 " if any such ticket or tickets shall prove fortunate or unfor-
 " tunate, or upon any other chance or chance, event, or
 " events, contingency or contingencies, relative or appli-
 " cable to the drawing of any such ticket or tickets, whether
 " as to the time of their being drawn, or otherwise howso-
 " ever, shall be deemed rogues and vagabonds, within the
 " true intent and meaning of the said recited act of the
 " seventeenth year of the reign of his said late majesty, and
 " shall be punishable as such rogues and vagabonds accor-
 " dingly, and all persons who shall be found offending
 " against this act, in the manner above-mentioned, shall
 " and may be apprehended and conveyed before some justice
 " or justices of the peace, as in and by the said recited act,
 " in relation to the rogues and vagabonds therein described,
 " is directed, and the justice or justices before whom such
 " offender shall be brought, such offender not having been Judices to
 " sued or prosecuted for the same offence, without covin or commit offend-
 " collusion, in some of his majesty's courts of record, by ers to the
 " such action of debt, bill, plaint, suit, or information, as house of cor-
 " aforesaid, shall and may, upon full and sufficient proof of rection till the
 " the offence, in the manner in and by the said recited act next quarter-
 " directed, order such offender to be sent to the house of session.
 " correction, there to remain until the next general or
 " quarter sessions of the peace for the county, riding,
 " division, or place, where the said offence was committed,
 " and the justices, at such sessions, shall enter upon the
 " examination of the case, and proceed therein according
 " to the direction of the said recited act of the seventeenth
 " year of his said late majesty, and all justices of the peace,
 " mayors, bailiffs, constables, headboroughs, and other his
 " majesty's civil officers within their respective jurisdictions,
 " are hereby impowered and strictly required to use their
 " utmost endeavours to prevent the committing of any of
 " the offences aforesaid, by all lawful ways and means, and
 " shall be, and are hereby indemnified for any thing done in
 " execution of this act."

1 Sect. 138. By 27. Geo 3, c 1. s. 3. it is further The powers of
 enacted, " That all other the powers, authorities, rules, recited act in
 " directions, punishments, and provisions, prescribed and 17. Geo. 3.
 " inflicted in and by the said recited act of the seventeenth extended to
 " year of his said late majesty, for the apprehending, secu- this act.
 " ring, and punishing persons as rogues and vagabonds
 " within the true intent and meaning of the said act, not
 " hereby altered, shall be applied and carried into execution
 " in relation to the persons hereby declared to be rogues
 " and vagabonds, as fully, to all intents and purposes, as if
 " the

" the same powers, authorities, rules, directions, punishments, and provisions, and every of them, had severally and respectively been re-enacted in this act."

From the passing of this act, the possessor of a whole ticket may insure it, by a written agreement, or its own value.

† *Sect. 139.* But by 27. Geo. 3. c. 1. s. 4. it is provided, " That it shall and may be lawful for any person actually possessed of any whole undrawn ticket, in any lottery now established, or hereafter to be established by law in *Great Britain*, to make, or cause to be made, any insurance on his or her ticket, for the indemnifying himself or herself against any loss which he or she may sustain by adventuring in the said lottery for or by reason of such ticket, so as every contract or agreement for such insurance be reduced into writing (without being subject to any of the duties under the management of the commissioners of stamps) before the time of such ticket being drawn in the said lottery; and so as the name of the possessor of such ticket at the time of such insurance, the number thereof, the lottery to which such ticket shall belong, and the amount of the premiums received thereon, be respectively inserted and expressed in such agreement, and so as every such insurance be made upon a whole ticket or whole tickets only, on condition to pay the full amount or value thereof, and not otherwise; any thing contained in this act, or in the said act of the twenty-second year of the reign of his present majesty, for licensing lottery-office keepers, and regulating the sale of lottery tickets, to the contrary thereof notwithstanding."

When an insurance is made, it must be for the whole time remaining of the drawing; and the ticket must be deposited with the receiver general of the stamp duties, or some person appointed by him to receive it.

Tickets and insurances are assignable.

† *Sect. 140.* By 27. Geo. 3. c. 1. s. 5. it is provided also, " That no such insurance shall be for a less time than shall then remain of the drawing of the said lottery; and that every such ticket so insured shall be deposited, by the person so insuring the same, in an office established, or to be established, by the commissioners for managing the duties upon stamped vellum, parchment, and paper, for the time being, for the deposit of tickets intended to be sold in shares, by virtue of an act passed in the twenty-second year of his present majesty's reign, intituled, *An act for licensing lottery-office keepers, and regulating the sale of lottery tickets*: and shall be there left with the receiver general of his majesty's stamp duties, or some person or persons to be appointed by him to receive the same, and who is and are hereby authorized and required to receive the same: provided also, that every such ticket so deposited may be assignable, together with such insurance."

+ *Secl. 141.* By 27. Geo. 3. c. 1. f. 6. it is further provided, "That if any person or persons whatsoever, not being duly licensed under the said act of the twenty-second year of his present majesty's reign, shall, from and after the day on which this act shall receive his majesty's royal assent, grant, sign, or underwrite any agreement for any such insurance as aforesaid; or shall take or receive any premium, or consideration in the nature of a premium, for such insurance, every such person or persons, not duly licensed as aforesaid, shall be subject to the like pains, penalties, and forfeitures, as are inflicted on persons keeping lottery-offices without the authority of such licence by the said act of the twenty-second year of his present majesty's reign, or by this act, to be levied and recovered, inflicted, applied, and carried into execution, as in and by this act is directed, and according to the true intent and meaning thereof."

Persons not
duly licensed
making insu-
rances, liable
to the penali-
ties of keep-
ing unlicensed
lottery-offices.

+ *Secl. 142.* By 27. Geo. 3. c. 1. f. 7. it is further provided, "That no person shall be liable to be prosecuted for any offence against this act, or such parts of the herein-before mentioned acts, or any of them, as touch and concern lotteries, by both the ways by this act prescribed, nor shall any person against whom any action, suit, or information, for the recovery of a pecuniary penalty hath been commenced and carried on with effect, be liable to imprisonment as a rogue and vagabond under this act for the same offence; and that where any person shall be convicted and sentenced to imprisonment as a rogue and vagabond under this act, such person shall not be liable afterwards to be prosecuted for any pecuniary penalty for the same offence."

Offenders not
to be liable to
prosecutions
for pecuniary
penalties, and
also as vaga-
bonds;

+ *Secl. 143.* By 27. Geo. 3. c. 1. f. 8. it is provided also, "That no person or persons shall be subject or liable to any prosecution before any justice or justices of the peace, for any offence against the herein-before mentioned acts, touching and concerning any lottery now established, or heretofore established in this kingdom, unless information thereof shall have been made on or before the fifth day of February one thousand seven hundred and eighty-seven."

nor before a
justice for of-
fences re-
specting lotte-
ries already
established,
unless infor-
mation has
been made be-
fore Feb. 5,
1787..

+ *Secl. 144.* By 27. Geo. 3. c. 1. f. 9. it is further enacted, "That all such penalties and forfeitures, and shares of penalties and forfeitures, and sums of money, which shall belong to his majesty, his heirs, and successors, and which shall be received by any officer or officers in the execution of this act, shall be paid into the hands

His majesty's
share of pe-
nalties to be
paid to the re-
ceiver-gene-
ral of the
stamp-office.

"hands of the receiver-general of the stamp office for the time being, who shall keep a separate and distinct account thereof, and thereout shall pay the expence the said office shall be put to in executing this act, and the said receiver-general shall pay the residue into the receipt of the exchequer, at such time, and in such manner, as other penalties and forfeitures, due and payable to his majesty, are or shall be paid or payable."

† *Stat.* 145. By 27 Geo. 3. c. 17. § 10. it is further enacted, "That if any person or persons shall at any time or times be sued, molested, or prosecuted, for any thing by him, her, or them done or executed in pursuance of this act, or of any clause, matter, or thing herein contained, such person or persons may plead the general issue, and give the special matter in evidence, for his, her, or their defence, and if, upon the trial, a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall become nonsuited, then such defendant or defendants shall have treble costs awarded to him, her, or them, against such plaintiff or plaintiffs."

General issue.

Treble costs.

Jaques v. Goughly, 2. Bl. Rep. 1093.
Jaques v. Withy, 1. H. Bl. Rep. 65.
 † *Stat.* 146. It has been decided, that if a person insure the numbers of state lottery tickets, and wins, and the insurer refuses to pay him, he has no remedy to recover the winnings, but he may recover back the moneys which he paid as premium for such insurance.

Davis v. Mazzinghi, 1. Term Rep. 705.
Watson v. Shaw, 2. Term Rep. 654.
Pricket v. Cross, 2. H. Bl. Rep. 17.
 † *Stat.* 147. It is also settled, that an affidavit to hold the party to bail under the statute 27 Geo. 3. c. 1. should specify the nature of the offence, and aver that the defendant has incurred the forfeiture but the offence need not be described circumstantially, it is sufficient if it state that the defendant "*injured or caused to be injured, &c.*" Nor is the plaintiff obliged to swear that the defendant is indebted to him in the amount of the penalty.

King v. Ham v. Hoare, 4. Term Rep. 349.
 † *Stat.* 148. But it is decided, that a plaintiff who sue, for penalties under the 27 Geo. 3. c. 1. § 2. must make an affidavit previous to the issuing out of the writ, specifying the amount of the penalties sued for, and that amount must be specified in the first process.

Holland v. Ham v. Hoare, 4. Term Rep. 428.
 † *Stat.* 149. It is also decided, that such affidavit may include several offences, and need not state that the defendant received any consideration for making the in-

† *Sec. 150.* But it is also settled, that where several persons have separately incurred penalties for printing illegal schemes in the lottery, a separate affidavit must be made and filed against each of them; and if they be all joined in one affidavit, the irregularity is not waived by their putting in bail, but the Court on motion will stay the proceedings against them all.

Goodwin v. Perry.
1 Am. v. Perry.
4 Term Rep.
577.

† *Sec. 151.* It is decided, that an unstamped agreement to sell a share of a ticket in the lottery before the tickets are deposited with the commissioners, is within the penalty inflicted by 22. Geo. 3. c. 47. s. 21.

Rex v. Hawksworth.
1. Term Rep.
450.

† *Sec. 152.* It is also settled, that an information against a person for insuring a ticket in the lottery, must state that the ticket on which the insurance is made was a ticket in the state lottery.

Rex v. Tre-lawney.
1. Term Rep.
222.

† *Sec. 153.* It is also decided, that a conviction on the 22. Geo. 3. c. 47. is bad, if the evidence do not state the offence to have been committed where laid.

Rex v. J. Ste.
1. Term Rep.
241.

† *Sec. 154.* So also if there are two offences laid in the information, a conviction "for the said offence" is bad.

Rex v. Salmon.
1. Term Rep.
249.

† *Sec. 155.* It is also settled, that the sale of lottery tickets, by which the purchaser is to be intitled to all the benefit of them, except the ten pound prizes, is prohibited and made void by 22 Geo. 3. c. 47, for since this act of parliament there is only one way of disposing of any interest in a ticket less than the whole, and that is in shares not less than sixteenths.

Decey v. Shee.
2. Term Rep.
621.

† *Sec. 156.* It is also decided, that if the printer of a newspaper publishes an illegal proposal for gambling in the lottery, he incurs the penalty inflicted by 22. Geo. 3. c. 47 s. 13.

King v. Smith.
4 Term Rep.
411.

AS TO THE SIXTH POINT, *viz.* The offence of gaming by means of the public funds.

† *Sec. 157.* By 7. Geo. 2. c. 8. it is recited, "That great inconveniences have arisen, and do daily arise, by the wicked, pernicious, and destructive practice of stock-jobbing, whereby many of his majesty's good subjects have been and are diverted from pursuing and exercising their lawful trades and vocations, to the utter ruin of themselves and families, to the great discouragement of industry, and to the manifest detriment of trade and commerce," for remedy thereof

Sdc 4. Burr.
2069.

All contracts made for liberty to put upon, accept, or refuse, any public stocks or securities, and wagers, &c. shall be void, &c.

thereof it is enacted, " That all contracts and agreements whatsoever, which shall be made or entered into by or between any person or persons whatsoever, upon which any premium, or consideration in the nature of a premium, shall be given or paid for liberty to put upon, or to deliver, receive, accept, or refuse, any public or joint stock, or other public securities whatsoever, or any part, share, or interest therein, and also all wagers and contracts in the nature of wagers, and all contracts in the nature of puts and refusals, relating to the then present or future price or value of any such stock or securities as aforesaid, shall be null and void to all intents and purposes whatsoever, and all premiums, sum or sums of money whatsoever, which shall be given, received, paid, or delivered, upon all such contracts or agreements, or upon any such wagers, or contracts in the nature of wagers, as aforesaid, shall be restored and repaid to the person or persons who shall give, pay, or deliver the same, who shall be at liberty, within six months from and after the making such contract or agreement, or laying any such wager, to sue for and recover the same from the person or persons to whom the same is or shall be paid or delivered, with double costs of suit, by action of debt founded on this act, to be prosecuted in any of his majesty's courts of record, in which action no essoin, protection, wager of law, or more than one imparlance, shall be allowed, and it shall be sufficient therein for the plaintiff to alledge, that the defendant is indebted to the plaintiff, or has received to the plaintiff's use, the money or premium so paid or received, whereby the plaintiff's action accrued to him, according to the form of this statute, without setting forth the special matter."

Persons sued on this act obliged to answer on oath.

† *Sect. 153.* By 7. Geo. 2. c. 8. s. 2. For the better discovery of the monies or premium which shall be given, paid, or delivered, and to be sued for and recovered, as aforesaid, it is further enacted, " That all and every the person or persons, who, by virtue of this present act, shall or may be liable to be sued for the same, shall be obliged and compellable to answer upon oath such bill as shall be preferred against him or them in any court of equity for discovering any such contract or wager, and the sum of money or premium so given, paid, or delivered, as aforesaid."

Security for costs.

† *Sect. 159.* " But by 7. Geo. 2. c. 8. s. 3. it is provided, " That the plaintiffs, relators, or informers, in such bill, shall and do (at the time of bringing or filing such bill) give good and sufficient security to answer and pay the " defendants

“ defendants in such bill full costs of suit, in case such costs
 “ shall be adjudged to the defendants, and that no person
 “ shall be obliged to appear or to answer such bill until
 “ such security is given.”

+ Sect. 160. By 7. Geo. 2. c. 8. s. 4. it is further enacted, “ That all and every person or persons whatsoever, Five hundred pounds penalty on making or executing any such puts or bargains.
 “ who shall enter into, make, or execute, any such contract,
 “ bargain, or agreement, upon which any premium, or con-
 “ sideration in the nature of a premium, shall be given or
 “ paid for liberty to put upon, or to deliver, receive, ac-
 “ cept, or refuse, any public or joint stock, or other public
 “ securities whatsoever, or any part, share, or interest therein,
 “ or any contract or bargain in the nature of puts and re-
 “ fusals, as aforesaid, or shall lay any such wager, or make
 “ any such contract in the nature of a wager, as aforesaid,
 “ (except such person or persons who shall actually and *bonâ* Exceptions.
 “ *fide*, without covin or collusion, sue and with effect pro-
 “ secute for the recovery of the money or premium given,
 “ delivered, or paid, by him, her, or them, as aforesaid;
 “ and also except such person or persons, who shall volun-
 “ tarily, before any action or suit commenced, actually and
 “ *bonâ fide*, without covin or collusion, repay or tender,
 “ before one or more witnesses or witnesses, such monies or
 “ premium as he, she, or they, shall have had, taken, re-
 “ ceived, or been paid, as aforesaid; and also except such
 “ persons who shall discover such transactions in any court
 “ of equity,) shall forfeit and pay the sum of five hundred
 “ pounds; and also all and every brokers, agents, scriveners,
 “ or other persons negotiating, transacting, or writing, any
 “ such contract, bargain, or agreement, as aforesaid, shall
 “ likewise forfeit and pay the sum of five hundred pounds;
 “ which said penalties shall and may be recovered by action
 “ of debt, bill, plaint, or information, in any of his ma-
 “ jesty’s courts of record at *Westminster*, in which no essoin,
 “ privilege, protection, or wage of law, or more than one
 “ imparlance, shall be allowed; one moiety thereof to the
 “ use of his majesty, his heirs and successors, and the other
 “ moiety thereof to the use of him, her, or them, who shall
 “ sue for the same.”

+ Sect. 161. By 7 Geo. 2. c. 8. s. 5. “ For preventing One hundred pounds penalty on giving or receiving money to compound differences relating to stock not actually delivered.
 “ the evil practice of compounding or making up differ-
 “ ences for stocks or other securities bought, sold, or at any
 “ time hereafter to be agreed so to be, it is further enacted,
 “ That no money or other consideration whatsoever (ex-
 “ cept as herein-after is provided) shall be voluntarily
 “ given, paid, had, or received, for the compounding, satis-
 “ fying,

"fying, or making up any difference for the not delivering, transferring, having, or receiving any public or joint stock, or other public securities, or for the not performing of any contract or agreement so stipulated and agreed to be performed; but that all and every such contract and agreement shall be specifically performed and executed on all sides, and the stock or security thereby agreed to be assigned, transferred, or delivered, shall be actually so done, and the money, or other consideration thereby agreed to be given and paid for the same, shall also be actually and really given and paid; and all and every person and persons whatsoever, who shall voluntarily compound, make up, pay, satisfy, take, or receive, such difference money, or other consideration whatsoever, for the not delivering, transferring, assigning, having, or receiving such stock, or other security, so to be agreed to be delivered, transferred, assigned, had, or received, as aforesaid (except in the manner herein-after provided), shall forfeit and pay the sum of one hundred pounds, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety thereof to the use of him, her, or them, who shall sue for the same."

Stock sold, and not paid for at the time prefixed, may be sold to any other persons.

† *Stat. 167.* But by 7. Geo. 2. c. 8. s. 6. it is provided, "That no person or persons, who shall sell any public or joint stock, or other public securities, to be delivered and paid for on a certain day, and which shall be refused or neglected to be paid for according to such agreement, shall be obliged to transfer the same, but it shall and may be lawful for such person or persons to sell such stock or other securities, which shall be so refused or neglected to be paid for, to any other person or persons, for the best price which can be obtained; and after such sale to receive (if the parties can agree) or to recover, as aforesaid, from the person or persons who first contracted for the same, all the damage which shall be sustained thereby."

Stock bought, and not transferred at the time prefixed, the buyer may purchase other stock, and recover his damage.

† *Stat. 163.* And by 7. Geo. 2. c. 8. s. 7. it is provided also, "That it shall and may be lawful to and for any person or persons, who shall buy any public or joint stock, or other public securities, to be accepted and paid for on a future day, and which shall be refused or neglected to be transferred, to buy the like quantity of such stock, or other public securities, if any other person or persons, at the current market price and to recover and receive, after
"such

“ such purchase and acceptance (if the parties can agree),
 “ from the person or persons who first contracted to sell or
 “ deliver the same, the damage which shall be sustained by
 “ reason of the not delivering or not transferring such stock
 “ or other securities; any thing in this act, or any law,
 “ usage, or custom, to the contrary notwithstanding.”

† *Stat. 164.* By 7. Geo. 2. c. 8. s. 8. after reciting, that Five hundred
 “ it is a frequent and mischievous practice for persons to pounds pe.
 “ sell and dispose of stocks, or other securities, of which they nally on buy-
 “ are not possessed,” it is further enacted, “ That all con- ing or selling
 “ tracts and agreements whatsoever, which shall be made or stock of which
 “ entered into for the buying, selling, assigning, or trans- actually pos-
 “ ferring, of any public or joint stock or stocks, or other sessed at the
 “ public securities whatsoever, or of any part, share, or in- time of the
 “ terest therein, whereof the person or persons contracting contract.
 “ or agreeing, or on whose behalf the contract or agreement
 “ shall be made, to sell, assign, and transfer the same, shall
 “ not, at the time of making such contract or agreement,
 “ be actually possessed of, or intitled unto, in his, her, or
 “ their own right, or in his, her, or their own name or
 “ names, or in the name or names of a trustee or trustees
 “ to their use; shall be null and void to all intents and pur-
 “ poses whatsoever; and all and every person and persons
 “ whatsoever, contracting or agreeing, or on whose behalf,
 “ and with whose consent, any contract or agreement shall
 “ be made, to sell, assign, or transfer, any public or joint
 “ stock or stocks, or other public securities, whereof such
 “ person or persons shall not, at the time of making such
 “ contract or agreement, be actually possessed of, or intitled
 “ unto, in his, her, or their own name or names, or in the
 “ name or names of a trustee or trustees to their use, or
 “ their own right as aforesaid, shall forfeit and pay the sum
 “ of five hundred pounds, to be recovered by action of debt,
 “ bill, plaint, or information, in any of his majesty's courts
 “ of record at *Westminster*, in which no essoin, privilege,
 “ protection, or wager of law, or more than one imparlance,
 “ shall be allowed; one moiety thereof to the use of his
 “ majesty, his heirs and successors, and the other moiety
 “ thereof to the use of him, her, or them, who shall sue for
 “ the same; and all and every broker or brokers, agent or
 “ agents, who shall negotiate, transact, or intermeddle, in
 “ the making or procuring to be made any such contract or One hundred
 “ agreement as aforesaid, and shall know that the person or pounds pe-
 “ persons, by whom or on whose behalf such contract or nally on bro-
 “ agreement shall be made, is or are not possessed of, or in- kers negoci-
 “ titled unto, the stock or security concerning which such ating such
 “ contract or agreement shall be made, in his, her, or their contract.
 “ own name or names, or in the name or names of a trustee
 “ or

“ or trustees for their use or right, shall, for every such offence, forfeit and pay the sum of one hundred pounds, to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at *Westminster*, in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety thereof to the use of him, her, or them, who shall sue for the same.”

All contracts for stock to be truly entered in the broker’s book

† *Stat. 165.* By 7. Geo. 2. c. 8. s. 9. “ All and every broker or brokers, or other person or persons, who shall negotiate or act as a broker receiving brokerage in the buying, selling, or otherwise disposing of any of the said public or joint stocks, or other public securities, shall respectively keep a book or register, which shall be called *The Broker’s Book*; in which said book he and they shall fairly, justly, and truly enter, all contracts, agreements, and bargains, that he or they shall from time to time make between any person or persons whatsoever, on the day of the making such contract or agreement, together with the names of the principal parties, as well buyers as sellers, and also the day of making such contract or agreement, to the intent and purpose that such broker or brokers, and other person or persons acting or negotiating as such as aforesaid, shall, from time to time, produce such book or register when therunto lawfully required: and in case such broker or brokers, or any other who shall negotiate or act as a broker as aforesaid, in relation to any the said matters, shall not keep such book or register, or shall wilfully omit to enter therein fairly, justly, and truly, any such contract, bargain, or agreement, as aforesaid, he or they shall, for every such offence or omission, forfeit and pay the sum of fifty pounds, to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at *Westminster*, in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety thereof to the use of him, her, or them, who shall sue for the same.”

on penalty of 50l. for each offence.

Accountant of the chancery may be as before.

† *Stat. 166.* But by 7. Geo. 2. c. 8. s. 10. it is provided “ That nothing in this act contained shall extend, or be construed to extend, to any contracts or agreements for the purchase or sale of any stock, annuities, or other public securities, to be made with the privy of the accountant-general of the court of chancery, in pursuance of any decree or order of the said court; but that all such contracts and agreements may be made and performed in
“ th

“ the same manner as they might have been if this act had never been made.”

† *Stat.* 167. And by 7. Geo. 2. c. 8. f. 11. it is provided also, “ That nothing in this act contained shall extend, or be construed to extend, to hinder or prevent any person or persons from lending any sum or sums of money on any public or joint stock, or other public securities whatsoever, or any part, share, or interest therein, or to prevent or hinder any defeazance, contract, or agreement, being made and entered into for the re-delivering, assigning, or transferring, such public or joint stock, or other public securities, or any part, share, or interest therein, upon the repayment of the sum or sums of money which shall have been lent and borrowed thereupon, with interest for the same, so as no premium or other consideration whatsoever be paid to, or received by, the person or persons lending such money, for or in consideration of such loan, more than legal interest.”

This act no to hinder persons from lending money on public stocks, or prevent the re-delivery thereof on repayment of the money lent.

† *Stat.* 168. It is said, that if money be paid by a party to a stockjobbing transaction, he cannot recover it back as having been paid upon an illegal consideration; because both parties are made criminal, and liable to the penalties.

Jaques v. Withey,
2. Bl. Rep. 1075.

† *Stat.* 169. But it has been decided, that if *A.* and *B.* are concerned in stockjobbing contracts, and *C.* not a party to the illegal transaction. pay the whole loss on the joint account, and *B.* gives a bond to *C.* for his moiety, the bond is good; but if *A.* or *B.* had paid all the money, neither of them could have maintained an action against the other for a moiety.

Faikney v. Renous,
4. Burr. 206

Thwait v. Warner,
Esp. 88.

† *Stat.* 170. So also it has been determined, that if two persons jointly engage in a stockjobbing transaction, and incur losses, and employ a broker to pay the differences, and one of them repay the broker, with the privity and consent of the other, the whole sum, he may recover a moiety from that other in an action for money paid to his use, notwithstanding the above statute.

Petrie v. Hannay,
3. Term Rep 418.

CHAPTER THE NINETY-THIRD.

O F

STROLLING PLAYERS.

† *Sec. 1.* By 10. Geo. 2. c. 28. s. 1. "Every person who Persons acting plays, &c. in any place where they have not a settlement, or without authority; &c. shall, for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed, any interlude, tragedy, comedy, opera; play, farce, or other entertainment of the stage, or any part or parts therein, in case such person shall not have any legal settlement in the place where the same shall be acted, represented, or performed, without authority by virtue of letters patent from his majesty, his heirs, successors, or predecessors, or without licence from the lord chamberlain of his majesty's household for the time being, shall be deemed to be a rogue and a vagabond within the intent and meaning of the said recited act, and shall be liable and subject to all such penalties and punishments, and by such methods of conviction, as are inflicted on, to be deemed or appointed by the said act for the punishment of rogues vagabonds, and vagabonds who shall be found wandering, begging, and disordering themselves, within the intent and meaning of the said recited act."

† *Sec. 2.* By 10. Geo. 2. c. 28. s. 2. it is further enacted, "That if any person having or not having a legal settlement as aforesaid shall, without such authority or licence as aforesaid, act, represent, or perform, or cause to be acted, represented, or performed, for hire, gain, or reward, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, every such person shall for every such offence forfeit the sum of fifty pounds; and in case the said sum and forfeit 50l. of fifty pounds shall be paid, levied, or recovered, such offender shall not for the same offence suffer any of the pains or penalties inflicted by the said recited act."

No new plays, or additions to old ones, to be acted, unless a copy be sent to the chamberlain, &c.

† *Stat.* 3. By 10. Geo. 2. c. 28. f. 3. "No person shall, for hire, gain, or reward, act, perform, represent, or cause to be acted, performed, or represented, any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein; or any new act, scene, or other part added to any old interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain of the king's household for the time being fourteen days at least before the acting, representing, or performing thereof, together with an account of the playhouse or other place where the same shall be, and the time when the same is intended to be first acted, represented, or performed, signed by the master or manager, or one of the masters or managers of such playhouse or place, or company of actors therein."

and persons acting against this prohibition, &c. forfeit 50*l.* and their licence.

† *Stat.* 4. By 10. Geo. 2. c. 28. f. 4. it is enacted, "That it shall and may be lawful to and for the said lord chamberlain for the time being, from time to time, and when, and as often as he shall think fit, to prohibit the acting, performing, or representing any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, or any prologue or epilogue; and in case any person or persons shall for hire, gain, or reward, act, perform, or represent, or cause to be acted, performed, or represented, any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, or any new prologue or epilogue, before a copy thereof shall be sent as aforesaid with such account as aforesaid, or shall for hire, gain, or reward, act, perform, or represent, or cause to be acted, performed, or represented, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, or any prologue or epilogue, contrary to such prohibition as aforesaid; every person so offending shall, for every such offence, forfeit the sum of fifty pounds, and every grant, licence, and authority (in case there be any such) by or under which the said matter or masters, or manager or managers, set up, formed, or continued such playhouse, or such company of actors, shall cease, determine, and become absolutely void, to all intents and purposes whatsoever."

No plays to be acted but in Westminster, or places at his

† *Stat.* 5. By 10. Geo. 2. c. 28. f. 5. "Provided always, that no person or persons shall be authorized by virtue of his majesty's residence."

“ of any letters patent from his majesty, his heirs, successors,
 “ or predecessors, or by the licence of the lord chamberlain
 “ of his majesty’s household for the time being, to act, re-
 “ present, or perform for hire, gain, or reward, any inter-
 “ lude, tragedy, comedy, opera, play, farce, or other enter-
 “ tainment of the stage, or any part or parts therein, in any
 “ part of *Great Britain*, except in the city of *Westminster*,
 “ and within the liberties thereof, and in such places
 “ where his majesty, his heirs, or successors, shall in their
 “ roval persons reside, and during such residence only ; any
 “ thing in this act contained to the contrary in any wise
 “ notwithstanding.”

+ *Sec. 6.* By 10. Geo. 2. c. 28. s. 6. it is further enacted, Penalties how recovered, &c.
 “ That all the pecuniary penalties inflicted by this act for
 “ offences committed within that part of *Great Britain* called
 “ *England*, *Hales*, and the town of *Berwick upon Tweed*, shall
 “ be recovered by bill, plaint, or information, in any of his
 “ majesty’s courts of record at *Westminster*, in which no
 “ essoin, protection, or wager of law, shall be allowed ; and
 “ for the offences committed in that part of *Great Britain*
 “ called *Scotland*, by action or summary complaint before
 “ the court of session or judiciary there ; or for offences
 “ committed in any part of *Great Britain*, in a summary
 “ way, before two justices of the peace for any county,
 “ stewardry, riding, division, or liberty where any such
 “ offence shall be committed, by the oath or oaths of one or
 “ more credible witnesses or witnesses, or by the confession
 “ of the offender ; the same to be levied by distress and sale
 “ of the offender’s goods and chattels, rendering the over-
 “ plus to such offender, if any there be, above the penalty
 “ and charge of distress ; and for want of sufficient distress,
 “ the offender shall be committed to any house of correction
 “ in any such county, stewardry, riding, or liberty, for any
 “ time not exceeding six months, there to be kept to hard
 “ labour, or to the common gaol of any such county,
 “ stewardry, riding, or liberty, for any time not exceeding
 “ six months, there to remain without bail or mainprize ;
 “ and if any person or persons shall think him, her, or
 “ themselves aggrieved by the order or orders of such jus-
 “ tices of the peace, it shall and may be lawful for such
 “ person or persons to appeal therefrom to the next general
 “ quarter-sessions to be held for the said county, stewardry,
 “ riding, or liberty, whose order therein shall be final and
 “ conclusive, and the said penalties for any offence against
 “ this act shall belong, one moiety thereof to the informer
 “ or person suing or prosecuting for the same, the other
 “ moiety to the poor of the parish where such offence shall
 “ be committed.”

Persons acting
in publick-
houses.

† *Stat. 7.* By 10. Geo. 2. c. 28. s. 7. it is further enacted,
“ That if any interlude, tragedy, comedy, opera, play,
“ farce, or other entertainment of the stage, or any act,
“ scene, or part thereof, shall be acted, represented, or per-
“ formed, in any house or place where wine, ale, beer, or
“ other liquors, shall be sold or retailed, the same shall be
“ deemed to be acted, represented, and performed, for gain,
“ hire, and reward.”

Limitation of
actions.

† *Stat. 8.* By 10. Geo. 2. c. 28. s. 8: it is further enacted,
“ That no person shall be liable to be prosecuted for any
“ offence against this act, unless such prosecution shall be
“ commenced within the space of six calendar months after
“ the offence committed; and if any action or suit shall be
“ commenced or brought against any justice of the peace,
“ or any other person for doing, or causing to be done, any
“ thing in pursuance of this act, such action or suit shall
“ be commenced within six calendar months next after the
“ fact done; and the defendant or defendants in such action

General issue.

“ or suit shall and may plead the general issue, and give the
“ special matter in evidence; and if upon such action or
“ suit a verdict shall be given for the defendant or defend-
“ ants, or the plaintiff or plaintiffs, or prosecutor shall
“ become nonsuit, or shall not prosecute his or their said
“ action or suit, then the defendant or defendants shall
“ have treble costs, and shall have the like remedy for the
“ same as any defendant or defendants have in other cases
“ by law.”

Treble costs.

† *Stat. 9.* By 17. Geo. 2. c. 5. “ Common players of
“ interludes, and all persons who shall for hire, gain, or
“ reward, act, represent, or perform, or cause to be acted,
“ represented, or performed, any interlude, tragedy, comedy,
“ opera, play, farce, or other entertainment of the stage, or
“ any part therein, not being authorized by law, shall be
“ deemed rogues and vagabonds.”

Justices of the
peace may, at
the general or
quarter ses-
sions, grant li-
cences for the
performance
of plays, &c.
under the re-
strictions
herein speci-
fied.

† *Stat. 10.* By 28. Geo. 3. c. 30. which recited the
above-mentioned statute 10. Geo. 2. c. 28. it is enacted,
“ That it shall and may be lawful to and for the justices of
“ the peace of any county, riding, or liberty, in general or
“ quarter sessions assembled, at their discretion, to grant a
“ licence to any person or persons, making application for
“ the same by petition, for the performance of such trage-
“ dies, comedies, interludes, operas, plays, or farces, as now
“ are, or hereafter shall be acted, performed, or represented,
“ at either of the patent or licensed theatres in the city of
“ Westminster, or as shall, in the manner prescribed by law,
“ have been submitted to the inspection of the lord cham-
“ berlain

“ berlain of the king’s household for the time being, at any
 “ place within their jurisdictions, or within any city, town,
 “ or place, situate within the limits of the same, for any
 “ number of days, not exceeding sixty days, to commence
 “ within the then next six months, and to be within the
 “ space of such four months as shall be specified in the said
 “ licence, so as there be only one licence in use at the same
 “ time within the jurisdiction so given, and so as such place
 “ be not within twenty miles of the cities of *London, West-*
 “ *minster*, or *Edinburgh*, or eight miles of any patent or li-
 “ censed theatre, or ten miles of the residence of his majesty,
 “ his heirs, or successors, or of any place within the same
 “ jurisdiction, at which, within six months preceding, a
 “ licence under this act shall have been had and exercised,
 “ or within fourteen miles of either of the universities of
 “ *Oxford* and *Cambridge*, or within two miles of the out-
 “ ward limits of any city, town, or place, having peculiar
 “ jurisdiction; and so also as no licence under this act shall
 “ have been had and exercised at the same place, within
 “ eight months then next preceding; any law or statute for
 “ the punishment of persons employed in theatrical repre-
 “ sentations to the contrary in any wise notwithstanding.”

+ *Sec. 11.* By 28. Geo. 3. c. 30. s. 2. “ Provided always, Licences not
 “ That no such licence shall be granted by the justices as to be granted
 “ aforesaid, to be exercised within any city, town, or place, within any
 “ having peculiar jurisdiction, unless proof shall be made place having
 “ that the majority of the justices acting for such peculiar peculiar juris-
 “ jurisdiction have, at a publick meeting, signed their con- diction, with-
 “ sent and approbation to the said application, or unless an out the con-
 “ express condition shall be therein inserted, that the same sent of the
 “ shall not be valid and effectual until it shall have been majority of the
 “ approved by the majority of the justices of such peculiar justices acting
 “ jurisdiction, at a meeting holden expressly for taking the for such juris-
 “ same into consideration.” diction.

+ *Sec. 12.* By 28. Geo. 3. c. 30. s. 3. “ Provided also, No licence to
 “ that no such licence shall be granted by the justices afore- be granted
 “ said within any city, town, or place, unless notice shall unless three
 “ have been given by the person or persons applying for weeks notice
 “ such licence, at least three weeks before such application, be given the
 “ to the mayor, bailiff, or other chief civil officer or officers, mayor, &c.
 “ of such city, town, or place, of his or their intending previous to
 “ to make such application.” application for
 “ a licence.

+ *Sec. 13.* It has been decided, that the dancing of Gallini &c.
 ballets at the Italian opera in the *Haymarket*, called the Laborie,
 King’s Theatre, is illegal, unless licensed as required by c. Term Rep.
 the 10. Geo. 2. c. 28. although the manager of such ballets 242.

has a licence under 25. Geo. 2. c. 36. for performing musical entertainments at another place; for the 10. Geo. 2. c. 28. extends to every species of stage entertainments.

Per ASH-
HURST, *Jes-*
nice, 5. *Term*
Rep. 244

† *Sec.* 14. It is said also, that a place licensed by the lord chamberlain pursuant to 10. Geo. 2. c. 28. does not require any licence from the other magistrates under 25. Geo. 2. c. 36.

CHAPTER THE NINETY-FOURTH,

OF VAGRANTS,

I SHALL consider,

1. Who shall be deemed vagrants.
2. How vagrants may be apprehended.
3. What reward may be given for apprehending vagrants,
4. In what case privy search may be made.
5. In what manner they may be passed.
6. How they may be punished.
7. Of harbouring vagrants.
8. Penalty on neglect of duty.
9. In what cases persons aggrieved may appeal.

As to THE FIRST POINT, viz. Who shall be deemed vagrants.

I shall consider,

1. Who shall be deemed *idle and disorderly persons*.
2. Who shall be deemed *rogues and vagabonds*.
3. Who shall be deemed *incorrigible rogues*.

As to the first particular, viz. Who shall be deemed *idle and disorderly persons*.

† *Seft.* 1. By 17. Geo. 2. c. 5. f. 1. it is enacted, "That Particular of-
 " all persons who threaten to run away and leave their fences, and
 " wives or children to the parish; and all persons who ^{their punish-}ments.
 " shall

“ shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices of the peace, without bringing a certificate from the parish or place whereunto they belong; and also persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parishes or places where they then are; and also all persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell; shall be deemed idle and disorderly persons.”

Persons neglecting to provide for their families, to be deemed idle and disorderly.

† *Sec. 2.* By 32. Geo. 3. c. 45. f. 8. after reciting that several persons, by their wilful default and neglect, permit their wives and children to become chargeable to their respective parishes or townships,” it is enacted, “ That if it shall be made appear to any two justices of the peace, that any poor person shall not use proper means to get employment, or, if he is able to work, by his neglect of work, or by spending his money in alehouses or places of bad repute, or in any other improper manner, shall not apply a proper proportion of the money earned by him towards the maintenance of his wife and family, by which wilful default or neglect they, or any of them, shall become chargeable to their parish or township, he shall be considered as an idle and disorderly person, and be subject to such punishment, and in such manner, as is directed for idle and disorderly persons by the aforesaid act.”

As to the second particular, *viz.* who shall be deemed *rogues and vagabonds.*

Offences of a higher nature.

† *Sec. 3.* By 17. Geo. 2. c. 5. f. 1. “ It shall and may be lawful for any person to apprehend and carry before a justice of the peace any such persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell; and if they shall resist, or escape from the person apprehending them, they shall be subject to the same punishment as rogues and vagabonds are made liable to by this act.”

Other offences and their punishments.

† *Sec. 4.* By 17. Geo. 2. c. 5. f. 2. it is enacted, “ That all persons going about as patent-gatherers or gatherers of alms, under pretences of lots by fire or other casualty; or going about as collectors for prisons, gaols, or hospitals; all fencers and bearwards; all common players of interludes; and all persons who shall, for hire, gain, or reward,

" reward, act, represent, or perform, or cause to be acted,
 " represented, or performed, any interlude, tragedy, comedy,
 " opera, play, farce, or other entertainment of the stage,
 " or any part or parts therein, not being authorized by law ;
 " all minstrels, jugglers ; all persons pretending to be gyp-
 " sies, or wandering in the habit or form of *Egyptians*, or
 " pretending to have skill in physiognomy, palmistry, or
 " like crafty science, or pretending to tell fortunes, or using
 " any subtil craft to deceive and impose on any of his ma-
 " jesty's subjects, or playing or betting at any unlawful
 " games or plays, and all persons who run away and leave
 " their wives or children, whereby they become chargeable
 " to any parish or place ; and all petty chapmen and pedlars
 " wandering abroad, not being duly licensed or otherwise
 " authorised by law ; and all persons wandering abroad, and
 " loaging in alehouses, barns, out-houses, or in the open
 " air, not giving a good account of themselves, and all
 " persons wandering abroad and begging, pretending to be
 " soldiers, mariners, seafaring men, or pretending to go to
 " work in harvest ; and all other persons wandering abroad
 " and begging ; shall be deemed rogues and vagabonds with-
 " in the true intent and meaning of this act."

† *Sec. 5.* By 17. Geo. 2. c. 5. s. 3. it was provided, *Proviso*,
 That the act should not extend to " soldiers wanting sub-
 " sistence, having lawful certificates from their officers or
 " the secretary at war, or to mariners or seafaring men li-
 " censed by some testimonial or writing under the hand and
 " seal of some justice of the peace, setting down the time or
 " place of their landing or discharge, and the place to which
 " such soldiers or mariners are to pass, and the names of
 " the chief towns or places through which they are to pass,
 " and limiting the time of such their passage, while they
 " continue in the direct way to the place to which they are
 " to pass, and during the time so limited." But by 32.
 Geo. 3. c. 45. s. 7. after reciting that such permission to beg
 is highly improper, it is enacted, " That every soldier and
 " mariner wandering abroad and begging, shall be deemed
 " a rogue and vagabond within the meaning of 17. Geo. 2.
 " c. 5."

† *Sec. 6.* By 17. Geo. 2. c. 5. s. 3. it is provided,
 " That nothing in this act contained shall extend to any
 " person or persons going abroad to work at any lawful
 " work in the time of harvest, so as he, she, or they, carry
 " with him, her, or them, a certificate in writing, signed by
 " the minister and one of the churchwardens or chapel-
 " wardens, or one of the overseers of the poor for the time
 " being, of the parish, chapel, or place, where they shall
 " respectively

“ respectively inhabit, declaring that he, she, or they, hath
 “ or have a dwelling-house or place there, in which he, she,
 “ or they inhabit.”

Every person
 apprehended,
 having any
 implement for
 housebreak-
 ing, or any
 offensive wea-
 pon, with fe-
 lorious intent,
 shall be deem-
 ed a rogue,
 &c. within
 17. Geo. 2. c. 5.

+ *Sect. 7.* By 23. Geo. 3. c. 88. it is enacted, “ That if
 “ any person or persons shall be apprehended, having upon
 “ him, her, or them, any picklock key, crow, jack, bit, or
 “ other implement, with an intent feloniously to break and
 “ enter into any dwelling-house, warehouse, coach-house,
 “ stable, or outhouse; or shall have upon him, her, or
 “ them, any pistol, hanger, cutlass, bludgeon, or other of-
 “ fensive weapon, with intent feloniously to assault any per-
 “ son or persons; or shall be found in or upon any dwell-
 “ ing-house, warehouse, coach-house, stable, or out-house,
 “ or in any inclosed yard or garden, or area belonging to
 “ any house, with an intent to steal any goods or chattels;
 “ every such person or persons shall be deemed a rogue and
 “ vagabond within the intent and meaning of the statute
 “ made in the seventeenth year of his late majesty *George*
 “ the second, intituled, *An Act to amend and make more ef-*
 “ *fectual the laws relating to rogues, vagabonds, and other idle*
 “ *and disorderly persons, and to houses of correction.*”

Persons who
 shall deal in
 tickets with-
 out taking out
 a licence pur-
 suant to 22.
Geo. 3. or
 sell chances,
 shall be deem-
 ed rogues and
 vagabonds.

+ *Sect. 8.* By 27. Geo. 3. c. 1. s. 3. it is enacted,
 “ That all and every person and persons who shall publicly
 “ or privately open, set up, continue, or keep, by himself or
 “ herself, or by any other person or persons, any office or
 “ other place for buying, selling, or otherwise dealing in
 “ any tickets, or any shares of tickets, in any lottery now
 “ established, or hereafter to be established, by any *British*
 “ or *Irish* act of parliament, or for registering the numbers
 “ of such tickets, without the authority of a licence duly
 “ obtained for that purpose from the commissioners for ma-
 “ naging the duties upon stamped vellum, parchment, and
 “ paper, for the time being, in the manner in and by the
 “ said recited act of the twenty-second year of the reign of
 “ his present majesty directed; and all and every person
 “ and persons (except as herein after is provided), who
 “ shall, by himself, herself, or themselves, or by any other
 “ person or persons, or for his, her, or their own account,
 “ or for or on the account, or as the servant, agent, or
 “ factor, of any other person or persons, sell, or cause or
 “ procure to be sold, the chance or chances of any such
 “ ticket or tickets, or any share or shares thereof, for a day
 “ or part of a day, or any less time than the whole time of
 “ drawing in any such lottery then to come; or insure, or
 “ cause or procure any other person or persons to insure,
 “ for or against the drawing of any such ticket or tickets;
 “ or shall receive any money or goods whatsoever, in con-
 “ sideration

“ fideration of any agreement or promise to repay any sum
 “ or sums of money, or to deliver the same, or any plate,
 “ jewels, or other goods whatsoever, if any such ticket or
 “ tickets shall prove fortunate or unfortunate, or upon any
 “ other chance or chances, event or events, contingency or
 “ contingencies, relative or applicable to the drawing of any
 “ such ticket or tickets, whether as to the time of their
 “ being drawn, or otherwise howsoever, shall be deemed
 “ rogues and vagabonds within the intent and meaning
 “ of the said recited act of the seventeenth year of the reign
 “ of his said late majesty, and shall be punishable as such
 “ rogues and vagabonds accordingly.”

+ *Sec. 9.* By 32. Geo. 3. c. 53. s. 17. it is recited, That
 “ whereas divers ill-disposed and suspected persons and re-
 puted thieves frequent the avenues to places of public resort,
 and the streets and highways, with intent to commit felony
 on the persons and property of his majesty's subjects there
 being, and although their evil purposes are sufficiently ma-
 nifest, the power of his majesty's justices of the peace to de-
 mand of them sureties for their good behaviour hath not been
 of sufficient effect to prevent them from carrying their evil
 purposes into execution,” and enacted, “ That it shall and
 “ may be lawful for any constable, headborough, patrol,
 “ or watchman, to apprehend every such person, and con-
 “ vey him or them before any justice of the peace: and if
 “ it shall appear before the said justice, upon the oath of
 “ one or more credible witness or witnesses, that such per-
 “ son or persons is or are a person or persons of evil fame,
 “ and a reputed thief or thieves, and such person or persons
 “ shall not be able to give a satisfactory account of himself
 “ or themselves, and of his or their way of living; and it
 “ shall also appear, to the satisfaction of the said justice,
 “ that there is just ground to believe that such person or
 “ persons was or were in such avenue, street, or highway,
 “ as aforesaid, with such intent as aforesaid, every such per-
 “ son shall be deemed a rogue and vagabond within the in-
 “ tent and meaning of the statute made in the seventeenth
 “ year of his late majesty king *George the Second*, intituled,
 “ *An Act to amend and make more effectual the laws relating to*
 “ *rogues and vagabonds, and other idle and disorderly persons,*
 “ *and to houses of correction:* Provided always, That if any
 “ person shall think himself aggrieved by the judgment of
 “ such justice as aforesaid, such person may appeal to the
 “ justices of the peace at the next general or quarter sessions
 “ of the peace to be held for the county or place wherein
 “ the cause of complaint shall have arisen, such person, at
 “ the time of his conviction, entering into a recognizance,
 “ with two sufficient sureties, conditioned personally to ap-
 “ pear

Constables,
 &c. may ap-
 prehend any
 suspicious
 person, and
 convey him
 before a jus-
 tice, and if it
 shall appear
 upon oath
 that he is a
 reputed thief,
 &c. he shall
 be deemed a
 rogue within
 17. Geo. 2.
 c. 5.

Persons
 thinking
 themselves
 aggrieved
 may appeal to
 the quarter-
 sessions.

If conviction be affirmed, the justices may proceed as might have been done if the party had been committed.

Punishments not to exceed imprisonment to hard labour for six months.

“pear at the said sessions, to try such appeal, and to abide the further judgment of the justices at such sessions assembled; and in case such conviction shall be affirmed at such sessions, the said justices may adjudge such person to be a rogue and vagabond, and proceed against such person in the same manner as they might have done if such rogue and vagabond had been committed to the house of correction until such general or quarter sessions: Provided always, That no person convicted under this act shall thereby become liable to any other punishment than imprisonment to hard labour for a term not exceeding six months, taking into the computation any actual imprisonment such person shall have suffered by his commitment until such session.”

As to the third particular, *viz.* Who shall be deemed *incorrigible rogues*.

Incorrigible rogues.
13. Geo. 1.
c. 23.

† *Stat.* 10. By 17. Geo. 2. c. 5. §. 4. it is enacted, “That all end-gatherers offending against the statute 13. Geo. 1. c. 23. being convicted of such offence, shall be deemed incorrigible rogues.”

Constables may search end gatherers.

If on search ends of yarn, &c. be found on them, they are to carry them before a justice.

† *Stat.* 11. By 13. Geo. 1. c. 23. §. 8. it is recited, “That whereas several abuses have been committed in the woollen manufacture by persons, commonly called *End-gatherers*, going about the counties within this kingdom, and collecting, buying, and receiving, from the labourers employed in such manufacture, ends of yarn, wefts, thrums, short yarn, and other refuse of cloth, druggot and other woollen goods, and goods mixed with wool, flocks and pinions only excepted;” it is therefore enacted, “That if any such person or persons shall be found collecting, buying, receiving, or any ways carrying or conveying, such ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, druggot, or other woollen goods, or goods mixed with wool, it shall and may be lawful for any constable or other peace-officer, by warrant under the hand and seal of one or more justice or justices of the peace, to search and examine such person or persons, his, her, or their bag or bags, or other convenience for carrying such ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, druggot, or other woollen goods, or goods mixed with wool; and if on such search such constable or other officer shall find on or with any such person or persons any such ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, druggot, or other woollen goods, or goods mixed with wool, flocks and pinions only excepted, that then such constable or other officer shall carry such

“ such person or persons before one or more justice or justices of the peace for the county, division, city, or town corporate where such person shall be so found and discovered so offending; which person or persons, upon due conviction of any of the said offences, on oath of one or more credible witness or witnesses, or by confession of the party or parties, him, her, or themselves, every such person so offending shall be deemed and taken to be a dangerous and incorrigible rogue, vagrant, or person, and shall be liable to be deemed, taken, and punished, as a dangerous and incorrigible rogue.”

On conviction to be deemed incorrigible rogues.

12. Ann. stat.
2. c. 23.

† Sect. 12. By 17. Geo. 2. c. 5. s. 4. it is further enacted, “ That all persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice or justices of the peace, or to be examined upon oath before such justice or justices, or refusing to be conveyed by any such pass as is herein-after directed, or knowingly giving a false account of themselves on such examination, after warning given them of their punishment; and all rogues or vagabonds who shall break or escape out of any house of correction before the expiration of the term for which they were committed or ordered to be confined by virtue of this act; and all persons who, after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences, shall be deemed incorrigible rogues within the true intent and meaning of this act.”

Incorrigible rogues.
13. Geo. 1. c. 23.

As to THE SECOND POINT, viz. In what manner vagrants may be apprehended.

† Sect. 13. By 17. Geo. 2. c. 5. s. 1. “ Any person may apprehend and carry before a justice of peace any such persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell.”

† Sect. 14. By 17. Geo. 2. c. 5. s. 5. “ If any person shall be found offending against this act, it shall and may be lawful for any person whatsoever to apprehend the person so offending, and to convey, or cause to be conveyed, to some justice of the peace the persons so apprehended, to be proceeded against in such manner as is herein-after directed: and in case any constable, or other such officer, shall refuse or neglect to use his best endeavours to apprehend or convey to some justice of the peace any such offender, it shall be deemed a neglect of duty in such constable or officer, and he shall be punished “ in

Any person may apprehend offenders.

Penalty on officers neglecting their duty.

“ in such manner as is herein-after directed : and in case
 “ any other person, being charged by any justice of the
 “ peace so to do, shall refuse or neglect to use his best en-
 “ deavours to apprehend and deliver to the constable or
 “ such other officer, or to carry such offender before some
 “ justice of the peace, where no constable or other such
 “ officer can be found, such person so offending as afore-
 “ said, being thereof convicted upon view, or by the oath
 “ of one or more credible witnels or witnesses, before one
 “ or more justice or justices of the peace, shall forfeit the
 “ sum of ten shillings, to the use of the poor of the parish
 “ or place wherein such offence shall be committed; to be
 “ levied by distress and sale of the offender's goods, by war-
 “ rant from any justice or justices; and the overplus (if
 “ any), after the charges of such distress satisfied, shall be
 “ returned to such offender.”

As to THE THIRD POINT, *viz.* What rewards may be given for apprehending vagrants.

Five shillings
reward for ap-
prehending
offenders.

† *Stat. 15.* By 17. Geo. 2. c. 5. s. 1. “ It shall and
 “ may be lawful for the said justice, by warrant under his
 “ hand and seal, to order any overseer of the poor of the
 “ parish or place where such offender shall be apprehended,
 “ to pay the sum of five shillings to any person or persons
 “ in any such parish or place so apprehending them, for
 “ every offender so apprehended; which sum shall be al-
 “ lowed to such overseer in his account, he producing the
 “ justice's order, and a receipt under the hand of the person
 “ or persons to whom such sum was paid: but if such
 “ overseer shall neglect or refuse to pay the said sum, the
 “ said justice, on oath thereof made, may, by warrant
 “ under his hand and seal, order the same to be levied by
 “ distress and sale of the goods of such overseer; and
 “ the overplus (if any), after the charges of such distress
 “ satisfied, shall be returned to such overseer, who in
 “ such case shall not be allowed the sum so levied in his
 “ account.”

Penalty on
overseer not
paying the
reward.

Reward for
taking up va-
gabonds, &c.

† *Stat. 16.* By 17. Geo. 2. c. 5. s. 5. “ And in case any
 “ person not being a constable, or such other officer, shall
 “ apprehend any such rogue or vagabond, and shall deliver
 “ him or her to a constable or other such officer, or shall
 “ convey, or cause him or her to be conveyed, to some jus-
 “ tice or justices of the peace, according to the directions
 “ of this act; or if any constable or other such officer shall
 “ so apprehend and convey such rogue or vagabond, it
 “ shall and may be lawful for such justice or justices to re-
 “ ward any such constable or other person, by making an
 “ order

“ order under hand and seal upon the high or chief constable, to pay the sum of ten shillings to the person so apprehending him or her, within one week after demand, and producing such order, and upon his giving a receipt for the same; and the same shall be allowed or paid by the treasurer of the county, riding, division, or liberty, to such high or chief constable on his passing his accounts, and delivering such order and receipt, and also his own receipt for the same to such treasurer; and the said justices at the general or quarter sessions shall allow the same to such treasurer in his accounts, upon his producing and delivering up the vouchers aforesaid: and in cities, boroughs, towns corporate, and other places where there are no high or chief constables, such petty constables and other officers shall pay or retain such reward as aforesaid, and be allowed what they shall so pay or retain by virtue of this act in their respective accounts, upon their producing and delivering up the like vouchers: and in case any high or chief constable, or where there is no high or chief constable, such petty constable or other officer shall refuse or neglect to pay such reward on demand, it shall and may be lawful for such justice or justices of the peace, by warrant under hand and seal, to levy the sum of twenty shillings, by distress and sale of the goods of such officer, and thereout to allow to the person intitled thereto the said reward of ten shillings, and such other recompence for his trouble, loss of time, and expences, as the said justice or justices shall think fit; and the overplus (if any) shall be returned to such officer upon demand.”

Penalty on not paying the reward.

† *Seç. 17.* But by 32. Geo. 3. c. 45. s. 2. it is further enacted, “ That no justice of the peace shall order any reward to be paid to any constable or other person for apprehending any rogue or vagabond, until such rogue or vagabond shall have been punished as hereby directed, and until the examination required by the aforesaid act be actually transmitted to the next general or quarter sessions, there to be filed and kept on record.”

No reward to be paid for apprehending rogues or vagabonds, until they shall have been punished, &c.

As to THE FOURTH POINT, *viz.* In what cases a *privy search* may be made, and how the offender may be *examined* and dealt with.

† *Seç. 18.* By 17. Geo. 2. c. 5. s. 6. it is enacted, “ That the justices of the peace for every county, riding, city, borough, town corporate, division, or liberty, or any two of them, shall four times in the year at least, or oftener (if need be), meet in their respective divisions, Vol. II. N n “ and General privy searches to be made.”

“ and by their warrant command the constables or other
 “ peace-officers of every hundred, parish, town, and ham-
 “ let, in their several divisions, who shall be assisted with
 “ sufficient men of the same places, to make a general
 “ privy search in one night, throughout their several and
 “ respective limits, for the finding and apprehending of
 “ rogues and vagabonds; and every justice of the peace
 “ shall also, on receiving information that rogues and vaga-
 “ bonds are in any place within his jurisdiction, issue his
 “ warrant to the constable, or other officer of such place, to
 “ search for and apprehend such rogues and vagabonds,
 “ and such rogues and vagabonds as they shall find and ap-
 “ prehend upon such searches, they shall cause to be brought
 “ before any justice or justices of the peace of the same
 “ county, riding, city, borough, town corporate, division,
 “ or liberty.”

Justices to pu-
 nish vaga-
 bonds, &c.
 taken up at
 privy search-
 es. See

3. Barr. 1636.

1 *Edw.* 19. By 17. *Geo.* 2. c. 5. s. 7. it is further
 enacted, “ That where any rogues or vagabonds, ap-
 “ prehended by any constable, or such other officer or
 “ person as aforesaid, or upon such search as aforesaid, shall
 “ be brought before any justice or justices of the peace, it
 “ shall and may be lawful for such justice or justices, and he
 “ or they are hereby required to inform himself or them-
 “ selves, by the examination upon oath of the person or per-
 “ sons apprehended, or of any other person of the condition
 “ and circumstances of the person or persons so appre-
 “ hended, and of the parish or place where he, she, or
 “ they were last legally settled, the substance of which ex-
 “ amination or examinations shall be put into writing, and
 “ be subscribed or signed by the person or persons so ex-
 “ amined; and the said justice or justices shall likewise
 “ sign the same, and transmit it to the next general or
 “ quarter sessions of the peace to be holden for the same
 “ county, riding, city, borough, town corporate, divi-
 “ sion, or liberty, there to be filed and kept on record; and
 “ such justice or justices of the peace shall, and are hereby
 “ required to order all such persons so apprehended to be
 “ publicly whipped by the constable, petty constable,
 “ or tythingman, or some other person to be appointed
 “ by such constable, petty constable, or tythingman of
 “ such parish or place where such persons were appre-
 “ hended; or to order such persons to be sent to the house
 “ of correction, there to remain until the next general
 “ or quarter sessions, or for any less time, as such justice
 “ or justices shall think proper.”

Rever. Brooke, 7. *†* *Stat.* 20. It has been decided, that a commitment by a
 justice of the peace for a time certain, as for fourteen days,
 162.

by

by virtue of the above clause, is a commitment in execution, and therefore that the party is not intitled to be bailed.

† *Sec. 21.* It is also decided, that as such a commitment is a commitment in execution, it must be preceded by a conviction. Rex v. Rhodes, 4. Term Rep. 220.

† *Sec. 22.* By 25. Geo. 2. c. 36. s. 12. it is enacted, Justices may
 “ That it shall, and may be lawful to and for any two or examine on
 “ more of his majesty’s justices of the peace, in any county, oath rogues,
 “ city, or liberty, in case any person apprehended upon vagabonds, and
 “ any general privy search, or by virtue of any special other disorderly persons;
 “ warrant, shall be charged before them with being a
 “ rogue and vagabond, or an idle and disorderly person,
 “ or with suspicion of felony (although no direct proof be
 “ then made thereof), to examine such person upon oath,
 “ not only as to the parish or place where he was last legally settled, but also as to his means of livelihood; the
 “ substance of which examination shall be put into writing,
 “ and be subscribed or signed by the person so examined; the examination to be
 “ and the said justices shall likewise sign the same, and transmitted to be
 “ transmit it to the next general or quarter sessions of the the sessions.
 “ peace to be holden for the same county, city, or liberty,
 “ there to be filed, and to be kept on record: and if such Person not
 “ person shall not make it appear to such justices that he giving a satisfactory account, &c. to
 “ has a lawful way of getting his livelihood, or shall not be committed,
 “ procure some responsible housekeeper to appear to his
 “ character, and to give security for his appearance before
 “ such justices at some other day to be fixed for that purpose (in case the same shall be required), to commit such
 “ person to some prison or house of correction, for any
 “ time not exceeding six days, and in the mean time to
 “ order the overseers of the poor, or one of them, of the and an advertisement to be
 “ parish or place in which such person shall be apprehended, published de-
 “ to insert an advertisement in some public paper, describing his person, and
 “ ing such suspicious person, and any thing or things the things
 “ which shall have been found upon him, or in his custody found on him.
 “ today, and which he shall be suspected not to have
 “ come honestly by, and mentioning the place to which
 “ such person is committed, and specifying the time and
 “ place when and where such person is to be again brought
 “ before them to be re-examined; and if no accusation
 “ shall be then laid against him, then such person shall
 “ be discharged, or otherwise dealt with, according to
 “ law.”

As to THE FIFTH POINT, *viz.* In what manner vagrants may be *passed*, I shall consider,

1. As to *English* vagrants.
2. As to *Scottish* vagrants.
3. As to *Irish* vagrants.
4. As to lunatic vagrants.
5. As to convicts discharged.
6. As to vagrants not passable.

As to the first particular, *viz.* In what cases *English* vagrants may be passed.

Different sorts
of vagabonds,
how to be
passed.

† *Stat.* 23. By 17. Geo. 2. c. 5. f. 7. it is further enacted, "That after such whipping or confinement, such justice or justices may, and are hereby empowered, if they think convenient, by a pass under hand and seal, in the manner and form hereafter directed, to cause such persons to be conveyed to the place of their last legal settlement; but if it cannot be found, then to the place of their birth; or if such persons, or any of them, be under the age of fourteen years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to some church-warden, chapel-warden, or overseer of the poor of such parish, town or place."

Duplicate of
the pass and
examination
to be sent to
the next gen-
eral or quar-
ter session.

† *Stat.* 24. By 17. Geo. 2. c. 5. f. 8. it is further enacted, "That such justice or justices shall make, or cause to be made, a duplicate of such pass and examination, and sign the same; and shall afterwards transmit the duplicate of the said pass annexed to the examination, to the next general or quarter sessions of the peace, there to be filed and kept on record, and shall annex the duplicate of the examination to the pass, and send it with the same; and the said pass, examination, and duplicates thereof, shall and may be read in any court of record in *England, Wales,* or the town of *Berwick upon Tweed*, as evidence."

Justices to re-
quire the
pass, and giv-
ing the officers
certificates.

† *Stat.* 25. By 17. Geo. 2. c. 5. f. 10. it is enacted, "That the justice or justices of the peace who shall make the pass, shall at the same time, with the said pass, cause likewise to be delivered to the constable, or other officer appointed to convey them, a note or certificate, ac-
cording to the following form."

"taining how they are to be conveyed, by horse, cart, or on foot, and what allowance such constable or other officer is to have for conveying them (according to the rates or allowances appointed by the general or quarter sessions of the peace, as is herein-after directed.")

† *Sec. 26.* By 17. Geo. 2. c. 5. s. 11. it is enacted, "That the constable, or other officer, who shall receive such pass and certificate, shall and is hereby required to convey, or cause to be conveyed, the person or persons named in such pass, in such manner, and in such time, as by the same pass shall be directed, the next direct way to the place where he, she, or they are ordered to be sent, if such place be in the same county, riding, division, corporation, or franchise, where the said person or persons were apprehended, but if the place to which the person or persons so apprehended is or are to be sent, lies in some other county, riding, division, corporation, or franchise, he shall deliver the said person or persons to the constable or such other officer of the first town, parish, or place, in the next county, riding, division, corporation, or franchise, in the direct way to the place to which such person or persons is or are to be conveyed, together with the said pass and duplicate of examination, taking his receipt for the same; and such constable or other officer shall, without delay, apply to some justice of the peace in the same county, riding, division, corporation, or franchise, who shall make the like certificate as before (*mutatis mutandis*), and deliver it to the said constable or other officer, who shall and is hereby required with all speed to convey the person or persons unto the first parish, town, or place in the next county, riding, division, corporation, or franchise, in the direct way to the place to which such person or persons is or are to be conveyed; and so in like manner from one county, riding, division, corporation, or franchise, to another, till they come to the place to which such person or persons is or are sent, and the constable or other officer, who shall deliver such person or persons to the churchwarden or other person ordered to receive them by such pass, shall at the same time deliver the said pass, with the duplicate of examination, taking their receipt for the same; and if the churchwarden or other person, who shall receive any person so sent, shall think the examination to be false, he is hereby empowered to carry the person so sent before some justice of the peace, who, if he see cause, may commit such person to the house of correction till the next quarter sessions, and the justices there, if they see cause, may deal with such person as an

The duty of officers with such pass and certificate.

See 26. Geo. 2. c. 34. Post p. 551. pl. 30.

“ incorrigible rogue ; but the person so sent shall not be
 “ removed from the place to which sent, but by order of
 “ two justices, in the same manner as other poor persons
 “ are removed to the place of their settlement.”

Persons shall
 pay for their
 own passage if
 they are found
 able.

† *Stat. 27.* By 17. Geo. 2. c. 5. f. 12. it is enacted,
 “ That it shall and may be lawful for any justice of the
 “ peace, before whom any vagrants shall be carried, to
 “ order such vagrants to be searched, and their bundles to
 “ be inspected by the constable, tythingman, churchwarden,
 “ or overseer of the poor, in the presence of the said justice ;
 “ and if it shall appear that any such vagrant shall be
 “ found to have sufficient wherewithal to pay for their pas-
 “ sage, either in the whole or in part, to the parish to
 “ which they belong, then the said justice or justices shall
 “ order so much of the money to be paid, or other effects
 “ found with or upon such vagrants, to be sold, and em-
 “ ployed for and towards the expence of taking up and
 “ passing such vagrants as aforesaid, returning the overplus
 “ (if any be), after deducting the charges of such sale, to
 “ such vagrants.”

Justices to li-
 mit the rates
 per mile for
 passing va-
 grants, &c.

† *Stat. 28.* By 17. Geo. 2. c. 5. f. 16. it is enacted,
 “ That the justices of the peace of any county, riding, city,
 “ borough, town corporate, division, or liberty, shall and
 “ may at the general or quarter sessions of the peace, from
 “ time to time, limit, appoint, and direct what rates and
 “ allowances per mile, or otherwise, shall be made for the
 “ passing, conveying, or maintaining of rogues, vagabonds,
 “ or incorrigible rogues, to be passed or conveyed as aforesaid ;
 “ and may likewise make such other orders, rules,
 “ and directions for the more regular proceeding or acting
 “ therein, within their respective limits and jurisdictions,
 “ as they in their discretion shall think proper ; which
 “ rates, allowances, orders, rules, and directions, shall from
 “ time to time be observed and submitted to by all justices
 “ of the peace, constables, officers, and other persons with-
 “ in the same limits and jurisdictions respectively.”

11:

† *Stat. 29.* By 17. Geo. 2. c. 5. f. 17. it is further
 enacted, “ That in case any petty constable, or other such
 “ officer of any parish or place, shall bring to any high or
 “ chief constable any such certificate as aforesaid, as shall
 “ be given him by any justice or justices of the peace for
 “ the proper county or place, ascertaining how and for
 “ what rates or allowances he shall be required to convey
 “ any rogues, vagabonds, or incorrigible rogues as aforesaid,
 “ together with a receipt or note from any constable
 “ or other officer or person to whom the person or persons
 “ so

" so to be conveyed was or were delivered, the said high
 " or chief constable shall and may pay unto such petty
 " constable, or other officer, the rates or allowances ascer-
 " tained in and by such certificate, and no more, taking
 " from such petty constable or other officer such certificate,
 " and his receipt for the same; and the said high, or chief
 " constable, shall be allowed the same by the treasurer of
 " the county, riding, liberty, division, corporation, or
 " franchise, on his passing his accounts, upon his pro-
 " ducing and delivering up such certificate and receipt, and
 " giving his own receipt for the same to such treasurer;
 " and the justices at the general or quarter sessions shall
 " allow the same to such treasurer in his accounts, upon
 " his producing and delivering up the vouchers aforesaid: Penalty on the
 " and in case any high or chief constable shall refuse or high constable's refusing
 " neglect to pay the said petty constable, or other officer to pay, as directed by the
 " or person, the rates or allowances ascertained in and by justices warrant.
 " such certificate and receipt, on demand, it shall and Altered by 26. Geo. 2. c. 34. s. 2.
 " may be lawful for any justice or justices of the peace, by warrant
 " warrant under hand and seal, to levy double the sum by 26. Geo. 2. c. 34. s. 2.
 " ascertained by such certificate, by distress and sale of the
 " goods of such high or chief constable, and thereout to
 " allow the said petty constable, or other officer or person,
 " the sum ascertained in and by such certificate and receipt,
 " and such other recompence for his trouble, loss of time,
 " and expences, as the said justice or justices shall think fit;
 " and the overplus (if any) shall be returned to such high or
 " chief constable upon demand; and in cities, towns-corporate, and other places, where there is no high or chief
 " constable, such petty constable or other officer shall be
 " allowed what they shall to pay pursuant to the directions
 " of such certificate, in their respective accounts, upon
 " their producing and delivering up such vouchers; or in
 " case any governor or master of a house of correction
 " shall deliver such certificate and receipt to any treasurer
 " as aforesaid, such treasurer shall pay the rates therein as-
 " certained to such governor or master of a house of cor-
 " rection, taking his receipt for the same, which shall be
 " allowed to such treasurer in his accounts, on his pro-
 " ducing and delivering up such vouchers."

+ *Sec. 30.* By 26. Geo. 2. c. 34. s. 2. it is enacted, Vagrants pass-
 " That all rogues, vagabonds, and incorrigible rogues sent ed from one
 " by passes from one county, riding, division, corporation, county to ano-
 " or franchise, into any other county, riding, division, cor- ther, how to
 " poration, or franchise, shall be delivered to the constable be conveyed.
 " or other such officer of the first town, parish, or place in
 " the next county, riding, division, corporation, or franchise,
 " and shall be by such constable or other such officer con-
 " veyed forward in the manner by the said act directed and

“ prescribed, and not otherwise ; and that it shall and may
 “ be lawful for the treasurer of each county, riding, divi-
 “ sion, corporation or franchise, and he is hereby required
 “ to pay to such constable or other officer the charges of
 “ conveying such rogues, vagabonds, and incorrigible
 “ rogues, upon such constable or other officer producing
 “ to him the certificate and such other vouchers as are re-
 “ quired by the said act to be delivered to such high or
 “ chief constables ; and the sums so paid shall be allowed
 “ by the justices of the peace to such treasurer in his ac-
 “ count, on his producing the vouchers aforesaid, toge-
 “ ther with the receipt of the said constable ; any thing in
 “ the said act contained to the contrary notwithstanding.”

Rogues or va-
 gabonds or-
 dered to be
 conveyed by
 passes, agree-
 able to the re-
 cited act, to be
 publicly whip-
 ped, or con-
 fined in a
 house of cor-
 rection, &c.

† *Sett.* 31. By 32. Geo. 3. c. 45. s. 1. it is enacted,
 “ That when any justice of the peace shall order to be con-
 “ veyed by a pass, under his hand and seal, any rogue or
 “ vagabond, according to the provisions of the said act,
 “ such rogue or vagabond shall be either publicly whipped,
 “ or be sent to the house of correction, there to remain
 “ until the next general or quarter sessions, or for any such
 “ less time as such justice of the peace shall think proper ;
 “ provided that such less time shall be at the least for the
 “ space of seven days, and that such justice of the peace
 “ shall certify, in the pass by which such person shall be
 “ ordered to be conveyed, that such person has been actually
 “ publicly whipped, or confined in the house of correc-
 “ tion for at least the space of seven days. provided also
 “ that no person shall be so whipped or imprisoned, and
 “ conveyed by a pass as a rogue or vagabond, who shall
 “ not have committed an act of vagrancy within the true
 “ intent and meaning of the said act, and who shall not
 “ have been convicted thereof.”

No female va-
 gabond to be
 whipped.

† *Sett.* 32. By 32. Geo. 3. c. 45. s. 3. it is further
 enacted, “ That whenever any female shall be guilty of any
 “ offence for which she shall be convicted as a rogue and
 “ vagabond, or incorrigible rogue, before any justice
 “ of the peace, or the court of general or quarter sessions,
 “ in no case whatever such justice or court of general
 “ or quarter sessions shall inflict the punishment of whip-
 “ ping upon such female rogue and vagabond, or incor-
 “ rigible rogue ; any law or statute to the contrary in
 “ any wise notwithstanding.”

Justices may
 order vagrants
 to be convey-
 ed by masters
 of houses of
 correction, &c.

† *Sett.* 33. By 32. Geo. 3. c. 45. s. 5. IT IS RECITED,
 “ That whereas the present mode of conveying vagrants in
 the custody of a constable is frequently insufficient, from
 the misconduct and negligence of constables,” and there-
 fore

fore ENACTED, "That the justices of the peace, at the general or quarter-sessions held for any county, riding, city, borough, town corporate, division, or liberty, or any adjournment thereof, shall be empowered to make an order that all rogues and vagabonds apprehended in their respective counties, ridings, cities, boroughs, towns corporate, divisions, or liberties, and who are ordered to be conveyed by pass, shall be conveyed by the master of the house of correction or his servants, or by a constable, as such justices at the general or quarter sessions, or any adjournment thereof, shall think proper; and such justices shall also be empowered to make an order, if they think proper, that all constables to whom rogues or vagabonds brought from another county, riding, city, borough, town corporate, division, or liberty, are delivered, shall forthwith convey such rogues and vagabonds to the nearest house of correction in their county, riding, city, borough, town corporate, division, or liberty, to be afterwards forwarded by the master of the house of correction, or his servants, as aforesaid, and according to the provisions of the said recited act."

+ *Stat.* 34. By 32. Geo. 3. c. 45. s. 6. it is further enacted, "That the justices of the peace of any county, riding, city, borough, town corporate, division, or liberty, shall and may, at the general or quarter sessions of the peace, from time to time, limit, appoint, and direct what rates and allowances *per* mile, or otherwise, shall be made for the passing, conveying, or maintaining of rogues, vagabonds, or incorrigible rogues, to be passed or conveyed as aforesaid, and may likewise make such other orders, rules, and directions for the more regular proceeding or acting therein, within their respective limits and jurisdictions, as they in their discretion shall think proper; which rates, allowances, orders, rules, and directions, shall from time to time be observed and submitted to by all justices of the peace, constables, officers, and other persons within the said limits and jurisdictions respectively."

Justices at sessions to direct what rates shall be allowed for passing, &c. rogues, &c.

+ *Stat.* 35. By 17. Geo. 2. c. 5. s. 19. it is enacted, "That the parish or place to which any rogue, vagabond, or incorrigible rogue, shall be conveyed by pass as aforesaid, shall take care to employ in work, or place in some work-house or alms-house, the person or persons so conveyed to them, until he, she, or they shall betake themselves to some service or other employment: and in case any such person or persons shall refuse to work, or shall not betake themselves to some service or employment,"

Vagabonds, &c. to be sent to work.

“ment, the overseers of the poor of the same parish or place,
 “or the major part of them, may cause such person or
 “persons to be carried before some justice of the peace, in
 “order to be sent to the house of correction, there to be
 “kept to hard labour.”

Act not to alter the manner of passing vagrants, as settled by special acts.

† *Sec. 36.* By 17. Geo. 2. c. 5. s. 27. it is further enacted, “That in all cities and towns where, by virtue of special acts of parliament, the charge of passing vagrants is to be defrayed in other manner than is by this act directed, or where such vagrants, by virtue of special statutes, are to be apprehended and conveyed to the places whither they are to be sent by any person or persons, or officers, other than those named for that purpose in this act, such charge shall be borne and defrayed in such cities and towns in like manner as before the making of this act; and the person or officer liable to such service in the said cities and towns, by virtue of the said special acts of parliament, shall continue liable, as if this act had never been made; and if any person shall be delivered to a beadle or constable within the city or liberties of the city of London, to be conveyed on, as directed by this act, the said beadle or constable shall not deliver such person in any other precinct within the said city or liberties, but in the next county, as directed by this act.”

As to the second particular, *viz.* In what manner *Scottish* vagrants may be passed.

Regulations for passing vagrants into Scotland.

† *Sec. 37.* By 17. Geo. 2. c. 5. s. 13. it is further enacted, “That the constable or other officer of any parish or place within the counties of *Cumberland, Northumberland, Durham*, or town of *Berwick upon Tweed*, shall, and they are hereby authorized and required, upon any person or persons being delivered to them by a pafs and examination who shall have been apprehended within the said counties or town, or brought to them according to the direction of this act, whose place of legal settlement is in that part of *Great Britain* called *Scotland*, to deliver the said examination to the clerk of the peace for such respective county, to be kept among the records of the sessions of that county, and to convey, or cause to be conveyed, such person or persons, with the said pafs, into the next adjoining shire, stewartry, or place in that part of the united kingdom; and to deliver him, her, or them to some constable or other officer of the next parish, district, or place within the said shire, stewartry, or place, taking his receipt for him, her, or them; and such officer is hereby required to receive such person or persons, and
 “give

“ give such receipt, and to dispose of him, her, or them,
 “ according to law; and in case any such vagrant, after
 “ being so sent and conveyed into that part of *Great Britain*
 “ called *Scotland*, shall, after being so sent as aforesaid, be
 “ found wandering, begging, or misbehaving him or herself
 “ within that part of *Great Britain* called *England*,* contrary
 “ to the true intent and meaning of this act; every such
 “ person so offending shall be deemed an incorrigible
 “ rogue, and be punished as incorrigible rogues are to be
 “ punished by this act.”

As to the third particular, *viz.* In what manner *Irisb*
vagrants may be passed.

† *Stat.* 38. By 17. *Geo.* 2. c. 5. s. 14. IT IS RECITED,
 “ That whereas divers vagrants have been conveyed from
 county to county, in order to be sent to places in *Ireland*,
 the isles of *Man*, *Jersey*, *Guernsey*, or *Scilly* (their last legal
 settlement), but for want of authority to compel masters of
 ships and vessels to take them on board, in order to be
 carried thither at reasonable rates, they may be very charge-
 able to the maritime counties, towns, and places in *England*
 and *Wales* where they may lie for such transportation,” AND
 ENACTED, “ That all and every master and masters of any
 “ ship, or vessel, or packet-boat, bound for *Ireland*, the isles
 “ of *Man*, *Jersey*, *Guernsey*, or *Scilly*, shall, and they and each
 “ of them is and are hereby required, upon warrant to him
 “ or them directed under the hand and seal of a justice of
 “ the peace of the county, town, or place where such ship,
 “ vessel, or packet-boat shall lie, to take on board the same
 “ such vagrant and vagrants as shall be named and expressed
 “ in the said warrant, and convey him, her, or them to
 “ such place in *Ireland*, the isles of *Man*, *Jersey*, *Guernsey*,
 “ or *Scilly*, as such ship, vessel, or packet-boat shall be bound
 “ to, or shall arrive at; and for the charges thereof such
 “ master shall take, and the constable or person who serves
 “ him with the said warrant shall pay such rate *per*
 “ head, as the justices of the peace at their quarter-sessions
 “ shall from time to time appoint, for every such vagrant so
 “ brought and delivered to him; and such master shall and
 “ is hereby required, on the back of the said warrant, to
 “ sign a receipt for the money so paid, and also for the
 “ vagrant or vagrants so brought and delivered; which
 “ warrant so indorsed shall then be produced to the justice
 “ of the peace who signed and sealed the same; and upon
 “ his allowance thereof, under his hand, the money so paid
 “ shall be repaid by the county, in such manner as by this
 “ act the money to be paid for conveying vagrants from
 “ county to county is directed; and every master of such
 “ ship,

Regulations
 for passing va-
 grants into
Ireland, &c.

Penalty on
masters of
ships refusing
to take va-
grants on
board.

“ ship, vessel, or packet-boat, neglecting or refusing to
“ receive on board, or to transport such vagrant or vagrants,
“ or to indorse and sign such receipt as aforesaid, shall
“ forfeit five pounds. to the use of the poor of the parish or
“ place where the offence shall be committed; to be levied
“ by distress and sale of the said ship, or any goods within
“ the same, by warrant under the hand and seal of any
“ justice of the peace for the same county, city, or town
“ corporate, returning the overplus (if any be) upon de-
“ mand, after the said penalty and charges of levying the
“ same are satisfied.”

As to the fourth particular, *viz.* In what manner *lunatic vagrants* shall be passed.

Lunatics to
be confined by
warrant of
justices.

+ *Stat. 39.* By 17. Geo. 2. c. 5. s. 20. IT IS RECITED,
“ That whereas there are sometimes persons, who by lunacy,
“ or otherwise, are furiously mad, or are so far disordered in
“ their senses, that they may be dangerous to be permitted
“ to go abroad;” and therefore ENACTED, “ That it shall and
“ may be lawful for any two or more justices of the peace,
“ where such lunatick or mad person shall be found, by
“ warrant under their hands and seals, directed to the con-
“ stables, churchwardens, and overseers of the poor of the
“ parish, town, or place, or some of them, to cause such
“ person so to be apprehended, and kept safely locked up in
“ some secure place, within the county or precinct where
“ such parish, town, or place shall lie, as such justices shall,
“ under their hands and seals, direct and appoint; and (if
“ such justices find it necessary) to be there chained, if the
“ last legal settlement of such person shall be in any parish,
“ town, or place, within such county or precinct; and if
“ such settlement shall not be there, then such person shall
“ be sent to the place of his or her last legal settlement by a
“ pass, *mutatis mutandis*, as aforesaid, and shall be locked up
“ or chained, by warrant of two justices of the county or
“ precinct to which such person is so sent, in manner aforesaid;
“ and the reasonable charges of removing, and of
“ keeping, maintaining, and curing such person during
“ such restraint (which shall be for and during such time
“ only as such lunacy or madness shall continue) shall be
“ satisfied and paid (such charges being first proved upon
“ oath) by order of two or more justices of the peace,
“ directing the churchwardens or overseers where any
“ goods, chattels, lands, or tenements of such person shall
“ be, to seize and sell so much of the goods and chattels,
“ or receive so much of the annual rents of the lands and
“ tenements as is necessary to pay the same; and to account
“ for what is so seized, sold, or received, to the next quar-
“ ter-

Goods and es-
tates of lunat-
icks to be
seized, to pay
the charge of
their mainte-
nance:

“ ter-fessions : but if such person hath not an estate to pay otherwise at
 “ and satisfy the same, over and above what shall be sufficient the charge of
 “ to maintain his or her family, then such charges shall be the parish.
 “ satisfied and paid by the parish, town, or place, to which
 “ such person belongs, by order of two justices, directed to
 “ the churchwardens or overseers for that purpose.”

† *Stat.* 40. By 17. Geo. 2. c. 5. s. 21. “ Provided *Proviso.*
 “ always, that this act, or any thing therein contained,
 “ shall not extend, or be construed to extend, to restrain or
 “ abridge the prerogative of the king, or the power or
 “ authority of the lord chancellor, lord keeper, or com-
 “ missioners of the great seal of *Great Britain* for the time
 “ being, or the chancellor, or vice-chancellor of the county
 “ palatine of *Lancaster* for the time being, or of the cham-
 “ berlain or vice-chamberlain of the county palatine of
 “ *Chester* for the time being, touching or concerning such
 “ lunatics, or to restrain or prevent any friend or relation
 “ of such lunatics from taking them under their own care
 “ and protection, any thing in this act contained to the
 “ contrary notwithstanding.”

As to the fifth particular, *viz.* In what manner *discharged*
convicts may be passed.

† *Stat.* 41. By 32. Geo. 3. c. 45. s. 4. it is enacted, *Convicts dis-*
 “ That any of his majesty’s judges at the assizes, and the charged from
 “ justices at the general or quarter sessions, or any justice of prison, and
 “ the peace, is and are hereby impowered to order, when- persons ac-
 “ ever he or they shall think proper, any convict, upon his quitted at as-
 “ discharge from prison, to be conveyed by pass under hand sises, &c. may
 “ and seal, in manner and form directed by the aforesaid act, be conveyed
 “ and according to the provisions therein contained; and by passes, &c.
 “ the judge, justices, or justice aforesaid, is or are also em-
 “ powered to convey by pass any person who shall be ac-
 “ quitted at the assizes, or general or quarter sessions, or
 “ discharged by proclamation or otherwise, who shall of
 “ himself or herself, or by any other person in his or her
 “ behalf, apply to the court whereat he or she has been
 “ acquitted or discharged, or to any justice of the peace, to
 “ be conveyed as aforesaid; and the judge, justices, or jus-
 “ tice aforesaid shall certify in such pass that the person so
 “ conveyed was discharged from prison, or a person ac-
 “ quitted, or otherwise discharged, at the assizes or sessions,
 “ as the case may be; and such convict, or person acquitted,
 “ or discharged, shall pay no fee whatever for such pass.”

As

As to the sixth particular, viz. In what manner *vagrants* not passable shall be dealt with.

How to order
vagrants,
whose settle-
ments cannot
be found.

† *Seet.* 42.* By 17. Geo. 2. c. 5. f. 28. it is further enacted, "That where any persons offending against this act, have been committed as aforesaid, to the house of correction, there to remain until the next general or quarter sessions, if, upon the examination of the persons so committed as aforesaid, no place can be found to which they may be sent by a pass as aforesaid, the said justices shall, at the said sessions, order such persons to be detained and employed in the house of correction, until they can provide for themselves, or until the justices of the peace, at their general or quarter sessions, can place them out in some lawful calling, as servants, apprentices, soldiers, mariners, or otherwise, either within this realm, or his majesty's colonies or plantations in *America*, which the said sessions are impowered to do in such manner as they shall think fit."

Beggars with
children how
to be ordered.

† *Seet.* 43. By 17. Geo. 2. c. 5. f. 24. IT IS RECITED, "That whereas persons are often found offending against this act, having children with them, whom they bring up in a dissolute course of life, destructive to such children, and prejudicial to the kingdom, in which a race of disorderly persons will increase, if such children are suffered to remain with such offenders;" and ENACTED, "That if any such child, above the age of seven years, shall be committed to the house of correction as aforesaid, it shall and may be lawful for the justices at the quarter-sessions, if they see convenient, at any time before such child be discharged, to order such child to be placed out in such manner as they shall think fit, as a servant or apprentice to any person within their respective jurisdictions, who is willing to take such child, to serve such person till such child shall arrive at the age of twenty-one years, or for any less time, as to the said justices shall seem meet: and if any offender, who was found with such child as aforesaid, shall be again found with the same child (which was so placed out as aforesaid) offending against this act, such offender shall be deemed an incorrigible rogue."

How to order
women deli-
vered of chil-
dren in the
street.

† *Seet.* 44. By 17. Geo. 2. c. 5. f. 25. IT IS RECITED, "That whereas women wandering and begging, are often delivered of children in parishes and places to which they do not belong, whereby they become chargeable to the same;" and ENACTED, "That where any such woman shall be so delivered, and become chargeable, it shall and may be lawful for the churchwardens or overseers of the poor of
" such

“ such parish or place, to detain such woman in their custody, until they can safely convey her to some justice of the peace, who shall examine her, and commit her to the house of correction, until the next general or quarter sessions, who may (if they see convenient) order her to be publicly whipt, and detained in the house of correction for any further time not exceeding six months; and upon application by the churchwardens or overseers of the place where she was so delivered, the justices at such sessions shall order the treasurer of the county or district to pay them such a sum of money as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman’s account; and if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither, for want of other settlement, by a pass, by virtue of this act; but the settlement of such woman shall be deemed the settlement of such child; any law to the contrary notwithstanding.”

As to the SIXTH POINT, *viz.* In what manner vagrants may be punished.

Having already described the punishment inflicted on *idle and disorderly* persons, and on such *rogues and vagabonds* as may have been apprehended on a privy search, I shall consider the *further punishment* which may be inflicted on *vagabonds* and *rogues*.

† Sect. 45. By 17. Geo. 2. c. 5. s. 9. “ Where any offender against this act shall be committed, as aforesaid, to the house of correction, there to remain until the next general or quarter sessions; and the justices at such sessions shall, on examination of the circumstances of the case, adjudge such person a rogue or vagabond, or an incorrigible rogue; they may, if they think convenient, order such rogue or vagabond to be detained and kept in the said house of correction to hard labour for any further time not exceeding six months, and such incorrigible rogue for any further time not exceeding two years, nor less than six months, from the time of making such order of sessions; and during the time of such person’s confinement, to be corrected by whipping, in such manner, and at such times and places within their jurisdictions, as, according to the nature of such person’s offence, they in their discretion shall think fit; and such person may (if the justices at the said sessions shall think convenient) afterwards be sent away by such pass, *mutatis mutandis*, as

Power of justices over vagabonds and incorrigible rogues.

“ afore-

“aforesaid; and if such person, being a male, is above the age of twelve years, the justices at their sessions may and are hereby impowered, at any time before he is discharged from the house of correction, to send him to be employed in his majesty's service, either by sea or land, if they shall judge proper: and in case any such incorrigible rogue, so ordered by the said general or quarter sessions to be detained and kept in the said house of correction, shall before the expiration of the time for which he or she shall be so ordered to be there detained and kept, break out or make his or her escape from the said house of correction, or shall offend again in like manner; in every such case, every such person shall be deemed and taken to be guilty of felony, and being legally convicted thereof, shall and may be transported for any term not exceeding seven years, in the same manner as by the laws now in being other felons may be transported.”

Ballie's Case,
Cases C. L.

† Sect. 46. It has been decided, that if a person be committed as a *rogue and vagabond* under 23. Geo. 3. c. 88. and break gaol, and on being committed as an *incorrigible rogue* under the above clause breaks gaol a second time, and then commits an act of vagrancy as a *rogue and vagabond*, he may be indicted for felony and transported.

As to the SEVENTH POINT, *viz.* Respecting harbouring of vagrants.

Penalty for
sheltering va-
gabonds.

† Sect. 47. By 17. Geo. 2. c. 5. §. 23. it is RECITED, “That whereas persons herein-before described to be rogues, vagabonds, or incorrigible rogues, are much encouraged in wandering about by the reception they too often meet with in villages and places where they are permitted to lodge in houses, barns, or other outhouses or buildings, by means whereof, and their falling sick there, great expences are sometimes brought upon parishes;” for remedy thereof it is ENACTED, “That if any person shall knowingly permit or suffer any such rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his or her house, barn, or other outhouse or buildings, and shall not apprehend and carry such rogue, vagabond, or incorrigible rogue, before some justice of the peace, or give notice to some constable or other such officer so to do; such person, being thereof lawfully convicted, either on confession or upon oath of one or more credible witnesses or witnesses, before one or more of his majesty's justices of the peace where such offence shall be committed, shall forfeit any sum not exceeding forty shillings nor less than ten shillings, one moiety thereof to the informer, and the other
“ moiety

“moiety to the use of the poor of the parish or place where
 “such offence shall be committed; to be levied by distress
 “and sale of the goods and chattels of such offender, by
 “warrant from such justice or justices, returning the over-
 “plus (if any) upon demand, after such forfeiture and
 “charges of such distress shall be satisfied; and if any
 “charge shall be brought upon any parish or place by
 “means of any such offence, the same shall be answered to
 “the said parish or place by such offender, and be levied
 “by distress and sale of his or their goods and chattels as
 “aforesaid; and if sufficient distress cannot be found, such
 “offender shall be committed to the house of correction
 “by the justice or justices, for any time not exceeding one
 “month.”

As to THE EIGHTH POINT, *viz.* Penalty on officers for neglect of duty.

+ *Stat.* 48. By 17. Geo. 2. c. 5. s. 22. “In case any
 “constable or other officer, or governor or master of any
 “house of correction, shall be defective, remiss, or negli-
 “gent in his duty, in the execution of this act, in any case
 “for which no punishment is herein-before particularly
 “provided; or in case any person or persons shall disturb
 “or hinder the execution of this act, or shall rescue any
 “person apprehended or passing from place to place by
 “virtue thereof, or shall be advising, aiding, or assisting to
 “his or her escape, and shall be thereof convicted, upon
 “the oath of one or more credible witness or witnesses,
 “before one or more justice or justices of the peace where
 “such offence shall be committed (which oath the said
 “justice or justices are hereby empowered to administer),
 “the person or persons so offending, for every such of-
 “fence, shall forfeit any sum not exceeding five pounds,
 “nor less than ten shillings, to the use of the poor of the
 “parish or place where such offence shall be committed;
 “to be levied by distress and sale of the offender’s goods,
 “by warrant from such justice or justices (returning the
 “overplus (if any be) upon demand, after the said for-
 “feiture and charges of making and keeping the said dis-
 “tress shall be paid and satisfied; and if sufficient distress
 “cannot be found, it shall and may be lawful to and for
 “one or more such justice or justices to commit the per-
 “sons so offending to the house of correction, there to be
 “kept to hard labour for any time not exceeding two
 “months.”

Penalty on of-
 ficers not do-
 ing their
 duty;

and on persons
 hindering the
 execution of
 this act, or
 rescuing a pri-
 soner.

To be levied
 by distress and
 sale, &c.

As to the NINTH POINT, viz. In what cases persons aggrieved may appeal.

Persons aggrieved may appeal to the next general or quarter sessions. *z. Term Rep. 196, notes.* † *Sect. 40.* By 17. Geo. 2. c. 5. §. 26. "Any persons aggrieved by any act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty, or division, giving reasonable notice thereof, whose order thereupon shall be final."

Rex v. Sparrow. † *Sect. 50.* It seems agreed, that if a party grieved appeal, he cannot, pending such appeal, have a writ of *certiorari*.

Rex v. Aldred, Michaelmas Term, † *Sect. 51.* It is also said, that notice of appeal ought to be given at the time of conviction. *z. Geo. 3.*

Rex v. Ringwold, † *Sect. 52.* It seems also, that no appeal can be brought by a *parish* against a *vagrant pauper*. *Burr. S.C. 340.*
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A
T A B L E
OF
P R I N C I P A L M A T T E R S
CONTAINED IN THE
S E C O N D V O L U M E.

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5. The possessors of land next adjoining every highway shall make ditches, &c. of a sufficient depth and breadth for keeping the highways dry, and shall scour and cleanse the same, and make sufficient trunks, tunnels, &c. on pain of 10s. after ten days notice by the surveyor, *201. f. 152*

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5. By 2. Edw. 3. if arms which strike a terror are used in making the entry, the persons authorized by that statute may seize the arms and imprison the offenders; but they cannot restate the party injured to his possession, 30. f. 5

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7. By 5. Rich. 2. c. 2. justices; with the power of the county, may commit such as hold forcibly after an entry made, Page 30. f. 7
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15. Neither shall an obligee be punished for forgery who erases the word *libris* and inserts *marcis*; for it is alone prejudicial to himself, 104. f. 4
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50. But Legislature has inflicted death, in the first instance, on the crime of forgery; for which see the first volume.
51. By 9. Anne, c. 14. if any person shall, by any fraud or shift, deceit, ill practice, &c. in playing at any of the games mentioned in the act, or by bearing stakes, or by betting, &c. win any sum of money, or other valuable thing, on conviction, by information or indictment, he shall forfeit five times the value, be deemed infamous, and suffer corporal punishment, as in cases of perjury, Page 117
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3. But to effect a *legal act*, even forcibly, by means of numbers, will not make the actors rioters, 53

4. Yet they are answerable for any *needless outrage*, 54

5. If numbers meet together innocently, as at a wake or fair, and a quarrel ensue, they are not rioters, but affrayers, 53. f. 3

6. Otherwise if they had formed parties under the pledge of mutual assistance, 53

7. Especially if the notice of their confederacy be for illegal purposes of a *private nature*, as pulling down bawdy-houses, &c. 54

8. And those who join such a confederacy, after it is once formed, are equally guilty, ibid.

9. The enterprize must be accompanied with some *offer* of violence, either to the person or possession of another, 54. f. 4

10. Therefore riding armed, in a manner conducing to terror, is only an unlawful assembly, and not a riot, 54

11. But the shew of armour, threatening speeches, turbulent gestures, &c. are sufficient *offers* of violence to maintain that the riot was *in terrorem populi*; for it must be so laid to be done, 54. f. 5

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13. Nor to do an act contrary to the common law or statute: as to celebrate mass, &c. if they perform it peaceably, ibid.

14. If the object of an assembling be of a *public nature*, as to pull down all bawdy-houses, &c. such rioters will be guilty of treason, 55. f. 6

15. And *private redress*, even where authorized by law, must be executed in a *peaceable* manner, or the offenders, if to the number of three or more, will be rioters, 55. f. 7

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17. A ROUT seems to be an unlawful assembling of persons with an *intention*, and actually *moving* to do a thing, the execution of which would make them rioters, ibid.

18. AN UNLAWFUL ASSEMBLY is an assembling with circumstances of terror, with or without an *intention* to do a riotous act, but neither *executing* it, or making any *motion* towards it, 56. f. 9

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20. All peace-officers may suppress a riot and command the assistance of other persons for that purpose, 57. f. 11

21. And as private persons may suppress an affray, *a fortiori* they may assist and arm themselves to suppress a riot, 57

22. Riots which favour of rebellion they may *certainly* interpose to suppress; for, on such occasions, no remedy can be too sharp or severe, ibid.

23. By 1. Geo. 1. c. 5. if twelve persons, riotously assembled, shall so continue together for one hour after proclamation, they may be apprehended by

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34. By 13. Hen. 4. c. 7. two justices, with the sheriff, may record a riot, and convict the offenders in the manner described by 34. Edw. 3. c. 1. 60. f. 19
35. And for the purpose of suppressing the riot, they may raise THE POSSE, which even noblemen are obliged to attend, and may arm themselves with proper weapons, *Page 60. f. 20*
36. And this they may do, not only upon view, but information of the riot, and upon seeing any detached parties of the rioters; yet if they alarm the county frivolously, they shall be punished, 61. f. 22
37. After view they may record the riot, although the rioters are in custody, and upon fresh suit may retake any who shall escape;—but afterwards the record must be sent to the king's bench, and process to retake must thence issue—they may, however, at any time arrest rioters to compel sureties for behaviour. 61
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42. By 13. Hen. 4. c. 7. if the rioters are dispersed before the two justices, sheriff, or under-sheriff, arrive, the justices (without the sheriff, p. 63. f. 33.) may, within a month after, enquire, hear, and determine the offence according to law, 63. f. 29
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52. And the said certificate must be made within a month after an enquiry, 66. f. 40
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57. But to incur this penalty the justices must live within the county; and if any justice execute the act, it excuses the rest, 67. f. 45, 46
58. Only those who dwell nearest the riot are liable; but if the nearest justice die, the next in vicinity is bound to execute the act; and if any others, on notice, of which the notoriety of the fact is sufficient, neglect to supply their default, they are fineable, 67. f. 47, 48, 49. 50
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2. And all justices, magistrates, and peace-officers are to execute this act, upon pain of punishment by the judges of assize, *ibid.*
3. Proceedings may be either *ex officio* or by writ out of chancery; but a record of them should be made and returned, if done *ex officio*, into the exchequer; if by writ, into chancery, *21. f. 5*
4. Offenders may be imprisoned not only upon view of the offence, but upon an inquest taken of it, *21. f. 6*
5. The under-sheriff may execute the writ officially, except it be specially directed, *21. f. 7*
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